Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

10 December 2013*

(Request for a preliminary ruling — Common European Asylum System — Regulation (EC) No 343/2003 — Determination of the Member State responsible for examining an asylum application — Review of compliance with the criteria for determining responsibility for examining the asylum application — Scope of judicial review)

In Case C-394/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Asylgerichtshof (Austria), made by decision of 21 August 2012, received at the Court on 27 August 2012, in the proceedings

Shamso Abdullahi

v

Bundesasylamt,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, T. von Danwitz, E. Juhász, A. Borg Barthet, C.G. Fernlund and J.L. da Cruz Vilaça, Presidents of Chambers, A. Rosas (Rapporteur), G. Arestis, J. Malenovský, A. Prechal, E. Jarašiūnas and C. Vajda, Judges,

Advocate General: P. Cruz Villalón,

Registrar: K. Malacek, Administrator,

Having regard to the written procedure and further to the hearing on 7 May 2013,

after considering the observations submitted on behalf of:

— Ms Abdullahi, by E. Daigneault and R. Seidler, Rechtsanwälte,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Greek Government, by G. Papagianni, L. Kotroni and M. Michelogiannaki, acting as Agents,

— the French Government, by S. Menez, acting as Agent,

— the Italian Government, by G. Palmieri, acting as Agent, and by G. Palatiello, avvocato dello Stato,

* Language of the case: German

— the Hungarian Government, by M. Fehér, G. Koós and K. Szíjjártó, acting as Agents,

— the United Kingdom, by J. Beeko, acting as Agent, and by S. Lee, Barrister,

— the Swiss Confederation, by D. Klingele, acting as Agent,

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

after hearing the Opinion of the Advocate General at the sitting on 11 July 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 10, 16, 18 and 19 of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

2 The request has been made in the course of proceedings between Ms Abdullahi, a Somali national, and the Bundesasylamt (Austrian Federal Asylum Office), concerning the determination of the Member State responsible for examining the asylum application that Ms Abdullahi had lodged with that authority.

Legal context

The Geneva Convention

3 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); 'the Geneva Convention'), entered into force on 22 April 1954. It was supplemented by the Protocol relating to the Status of Refugees of 31 January 1967 ('the 1967 Protocol'), which entered into force on 4 October 1967.

4 All the Member States of the European Union are contracting parties to the Geneva Convention and to the 1967 Protocol, as are the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein. The European Union is not a contracting party to the Geneva Convention or to the 1967 Protocol, but Article 78 TFEU and Article 18 of the Charter of Fundamental Rights of the European Union ('the Charter') provide that the right of asylum is to be guaranteed with due respect for the Geneva Convention and the 1967 Protocol.

European Union ('EU') law

5 In order to achieve the objective, laid down by the European Council meeting in Strasbourg on 8 and 9 December 1989, of harmonising their asylum policies, the Member States signed in Dublin, on 15 June 1990, the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (OJ 1997 C 254, p. 1; 'the Dublin Convention'). The Dublin Convention entered into force on 1 September 1997 for the 12 original signatories, on 1 October 1997 for the Republic of Austria and the Kingdom of Sweden, and on 1 January 1998 for the Republic of Finland.

6 The conclusions of the European Council meeting in Tampere on 15 and 16 October 1999 envisaged, inter alia, the establishment of a Common European Asylum System.

7 The Amsterdam Treaty of 2 October 1997 inserted Article 63 in the EC Treaty, which conferred competence on the European Community to adopt the measures recommended by the European Council in Tampere. The adoption of that provision made it possible, inter alia, to replace – as between the Member States, with the exception of the Kingdom of Denmark – the Dublin Convention with Regulation No 343/2003, which entered into force on 17 March 2003.

8 It is also on that legal basis that a number of directives were adopted, including the following:

— 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, p. 12); that directive was replaced with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9);

— 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); that directive was replaced with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

Regulation No 343/2003

9 Recitals 3 and 4 in the preamble to Regulation No 343/2003 are worded as follows:

‘(3) The Tampere conclusions also stated that this 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.

(4) 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 determining refugee status and not to compromise the objective of the rapid processing of asylum applications.’

10 Regulation No 343/2003 lays down, in accordance with Article 1 thereof, the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country national.

11 Article 3(1) of that regulation provides:

‘Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum. 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.’

12 To enable determination of the ‘Member State responsible’ for the purposes of Article 3(1) of Regulation No 343/2003, Articles 6 to 14 of that regulation – set out in Chapter III, which is entitled ‘Hierarchy of criteria’ – list, in order of priority, objective criteria relating to unaccompanied minors, family unity, the issue of a residence permit or visa, illegal entry into or residence in a Member State, lawful entry into a Member State and applications made in the international transit area of an airport.

13 Article 10 of Regulation No 343/2003 is worded as follows:

‘1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), including the data referred to in Chapter III of [Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention (OJ 2000 L 316, p. 1)], that an asylum seeker 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 asylum. This responsibility shall cease 12 months after the date on which the irregular border crossing took place.

2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), that the asylum seeker – who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established – at the time of lodging the application has been previously living for a continuous period of at least five months in a Member State, that Member State shall be responsible for examining the application for asylum.

If the applicant has been living for periods of time of at least five months in several Member States, the Member State where this has been most recently the case shall be responsible for examining the application.’

14 Article 13 of Regulation No 343/2003 provides that, where no Member State can be designated consistently with the order of priority in which the criteria are listed in that regulation, the default rule is that the first Member State with which the application for asylum was lodged is to be responsible for examining that application.

15 Under Article 16 of Regulation No 343/2003:

‘1. The Member State responsible for examining an application for asylum under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 17 to 19, of an asylum seeker who has lodged an application in a different Member State;

(b) complete the examination of the application for asylum;

...

2. Where a Member State issues a residence document to the applicant, the obligations specified in paragraph 1 shall be transferred to that Member State.

3. The obligations specified in paragraph 1 shall cease where the third-country national has left the territory of the Member States for at least three months, unless the third-country national is in possession of a valid residence document issued by the Member State responsible.

...’

16 In accordance with Article 17 of Regulation No 343/2003, where a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may – as quickly as possible and in any case within three months of the date on which the application was lodged – call upon the other Member State to take charge of the applicant.

17 Article 18 of Regulation No 343/2003 provides:

‘1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received.

2. In the procedure for determining the Member State responsible for examining the application for asylum established in this Regulation, elements of proof and circumstantial evidence shall be used.

3. In accordance with the procedure referred to in Article 27(2) two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:

(a) Proof:

(i) This refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary.

(ii) The Member States shall provide the Committee provided for in Article 27 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs.

(b) Circumstantial evidence:

(i) This refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them.

(ii) Their evidentiary value, in relation to the responsibility for examining the application for asylum shall be assessed on a case-by-case basis.

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

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

...

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the provisions for proper arrangements for arrival.’

18 Under Article 19(1) to (4) of Regulation No 343/2003:

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

2. The decision referred to in paragraph 1 shall set out the grounds on which it is based. It shall contain details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the

Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis if national legislation allows for this.

3. The transfer of the applicant from the Member State in which the application for asylum was lodged to the Member State responsible shall be carried out in accordance with the national law of the first 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 that charge be taken or of the decision on an appeal or review where there is a suspensive effect.

…

4. Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. 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 asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.'

19 Regulation No 343/2003 was replaced by 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 (recast) (OJ 2013 L 180, p. 31).

Regulation No 1560/2003

20 In 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), Article 3, which is entitled 'Processing requests for taking charge', provides:

'1. The arguments in law and in fact set out in the request shall be examined in the light of the provisions of Regulation (EC) No 343/2003 and the lists of proof and circumstantial evidence which are set out in Annex II to the present Regulation.

2. Whatever the criteria and provisions of Regulation (EC) No 343/2003 that are relied on, the requested Member State shall, within the time allowed by Article 18(1) and (6) of that Regulation, check exhaustively and objectively, on the basis of all information directly or indirectly available to it, whether its responsibility for examining the application for asylum is established. If the checks by the requested Member State reveal that it is responsible under at least one of the criteria of that Regulation, it shall acknowledge its responsibility.'

21 Article 4 of Regulation No 1560/2003, entitled 'Processing of requests for taking back' provides:

'Where a request for taking back is based on data supplied by the Eurodac Central Unit and checked by the requesting Member State, in accordance with Article 4(6) of Regulation (EC) No 2725/2000, the requested Member State shall acknowledge its responsibility unless the checks carried out reveal that its obligations have ceased under the second subparagraph of Article 4(5) or under Article 16(2), (3) or (4) of Regulation (EC) No 343/2003. The fact that obligations have ceased on the basis of those provisions may be relied on only on the basis of material evidence or substantiated and verifiable statements by the asylum seeker.'

22 Article 5 of No 1560/2003, entitled ‘Negative reply’, provides:

‘1. Where, after checks are carried out, the requested Member State considers that the evidence submitted does not establish its responsibility, the negative reply it sends to the requesting Member State shall state full and detailed reasons for its refusal.

2. Where the requesting Member State feels that such a refusal is based on a misappraisal, or where it has additional evidence to put forward, it may ask for its request to be re-examined. This option must be exercised within three weeks following receipt of the negative reply. The requested Member State shall endeavour to reply within two weeks. In any event, this additional procedure shall not extend the time limits laid down in Article 18(1) and (6) and Article 20(1)(b) of Regulation (EC) No 343/2003.’

23 Under Article 14 of that regulation, entitled ‘Conciliation’:

‘1. Where the Member States cannot resolve a dispute, either on the need to carry out a transfer or to bring relatives together on the basis of Article 15 of Regulation (EC) No 343/2003, or on the Member State in which the persons concerned should be reunited, they may have recourse to the conciliation procedure provided for in paragraph 2 of this Article.

2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article 27 of Regulation (EC) No 343/2003. By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

The Chairman of the Committee shall appoint three members of the Committee representing three Member States not connected with the matter. They shall receive the arguments of the parties either in writing or orally and, after deliberation, shall propose a solution within one month, where necessary after a vote.

The Chairman of the Committee, or his deputy, shall chair the discussion. He may put forward his point of view but he may not vote.

Whether it is adopted or rejected by the parties, the solution proposed shall be final and irrevocable.’

24 Article 14 was repealed by Regulation No 604/2013, but its content is reproduced in Article 37 of that regulation.

Directive 2005/85

25 Recital 29 in the preamble to Directive 2005/85 states:

‘This Directive does not deal with procedures governed by [Regulation No 343/2003].’

Austrian law

26 Paragraph 18(1) of the Bundesgesetz über die Gewährung von Asyl (Federal Law on the Granting of Asylum; BGB1. I, 100/2005), provides:

‘The Bundesasylamt and the Asylgerichtshof [(Asylum Court)] must at all stages of the procedure ensure *ex officio* that the information relevant to the decision is provided or that incomplete information concerning the circumstances relied on in support of the application is supplemented,

that the evidence to substantiate such information is specified or that the evidence offered is supplemented and, in general, that any clarifications required in support of the application are provided. If necessary, evidence must also be obtained *ex officio*.'

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

27 Ms Abdullahi is a Somali national aged 22. She entered Syria by air in April 2011 and then travelled through Turkey in July of the same year before entering Greece illegally by boat. Ms Abdullahi did not lodge an asylum application with the Greek Government. With the assistance of people smugglers, she travelled to Austria, in the company of other persons, passing through the Former Yugoslav Republic of Macedonia, Serbia and Hungary. She crossed the borders of all of those countries illegally. Ms Abdullahi was arrested in Austria, close to the Hungarian border, by Austrian police officials who established the route taken by Ms Abdullahi by also interviewing other persons who had made the same journey.

28 In Austria, Ms Abdullahi lodged an application for international protection with the Bundesasylamt, the competent authority, on 29 August 2011. On 7 September 2011, the Bundesasylamt requested that Hungary take charge of Ms Abdullahi in accordance with Article 10(1) of Regulation No 343/2003. By letter of 29 September 2011, Hungary agreed to do so because – according to the information provided by Ms Abdullahi, as forwarded to Hungary by the Austrian Republic, and the general information available concerning the routes taken by illegal immigrants – there was sufficient evidence that Ms Abdullahi had entered Hungary illegally from Serbia and that she had subsequently travelled directly to Austria.

29 By decision of 30 September 2011, the Bundesasylamt rejected as inadmissible Ms Abdullahi's asylum application in Austria and ordered her removal to Hungary.

30 Ms Abdullahi brought an appeal against that decision, which the Asylgerichtshof allowed by judgment of 5 December 2011 on account of procedural flaws. The appeal entailed a number of criticisms of the asylum situation in Hungary in the light of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), prohibiting torture and inhuman and degrading treatment, and it was submitted that the Bundesasylamt had assessed the situation prevailing in Hungary on the basis of obsolete sources.

31 Following the Asylgerichtshof's decision, the Bundesasylamt resumed the administrative procedure and, by decision of 26 January 2012, once again rejected the asylum application as inadmissible and at the same time ordered Ms Abdullahi's removal to Hungary. In support of its decision, the Bundesasylamt – which had updated the information available to it with regard to Hungary – found, inter alia, that Ms Abdullahi's removal to that State would not affect her rights under Article 3 of the ECHR.

32 A further appeal, brought on 13 February 2012 before the Asylgerichtshof, was lodged against that decision, in which Ms Abdullahi claimed for the first time that the Member State responsible for her asylum application was not Hungary but the Hellenic Republic. She argued, however, that the Hellenic Republic did not observe human rights in certain respects and that, accordingly, it was for the Austrian authorities to complete the examination of her asylum application.

33 The Austrian authorities did not initiate a consultation procedure with the Hellenic Republic; nor did they request that Member State to take charge of Ms Abdullahi.

34 By judgment of 14 February 2012, the Asylgerichtshof declared that Ms Abdullahi's appeal was unfounded, holding that, in accordance with Article 10(1) of Regulation No 343/2003, Hungary was the Member State responsible for processing the asylum application.

35 Ms Abdullahi brought an appeal before the Verfassungsgerichtshof (Constitutional Court) essentially repeating the argument that the Member State responsible for examining the application was not Hungary but the Hellenic Republic. By judgment of 27 June 2012 (U 350/12-12), the Verfassungsgerichtshof set aside the judgment of the Asylgerichtshof of 14 February 2012. The grounds given for the decision of the Verfassungsgerichtshof referred to another judgment, delivered on the same day on similar facts (judgment U 330/12-12). In its judgment, the Verfassungsgerichtshof described as 'dubious' the argument on which the Asylgerichtshof had based its decision confirming Ms Abdullahi's removal to Hungary, that is to say, the argument that responsibility established in accordance with Article 10(1) of Regulation No 343/2003 (that of the Hellenic Republic) is cancelled out where a person has resided in a third country, even for a short period (in the present case, the Former Yugoslav Republic of Macedonia and Serbia). According to the Verfassungsgerichtshof, although the Asylgerichtshof's decision that Hungary was the Member State responsible was justified in the light of German and Austrian academic opinion regarding Regulation No 343/2003, a number of Austrian legal scholars also put forward arguments to the contrary. The fact that Ms Abdullahi had travelled on to a third country would only have cancelled out the Hellenic Republic's obligation under Article 16(3) of Regulation No 343/2003 to take charge of her if she had left the territory of the Member States for at least three months. Furthermore, the Verfassungsgerichtshof found that the reference to Joined Cases C-411/10 and C-493/10 *N.S. and Others* [2011] ECR I-13905 was not relevant in so far as that case and the main action are not comparable on the facts.

36 On the view that the question should have been referred to the Court of Justice for a preliminary ruling, the Verfassungsgerichtshof set aside the judgment of the Asylgerichtshof on the ground that that court had infringed Ms Abdullahi's right to a procedure before the court assigned to her by law (sometimes referred to as the principle of 'the lawful judge').

37 The judgment handed down by the Verfassungsgerichtshof on 27 June 2012 was notified to the Asylgerichtshof on 10 July 2012. Since then the proceedings have been pending before the Asylgerichtshof.

38 As the Verfassungsgerichtshof had cast doubt on the significance attached to a Member State's acceptance of responsibility, that is the first point to be addressed by the Asylgerichtshof. The Asylgerichtshof observes that a review of a Member State's responsibility entails an obligation to undertake a very broad examination, incompatible with the rapidity with which the competent Member State must be determined. Furthermore, although Regulation No 343/2003 confers on the applicant for asylum the right to challenge a transfer to another jurisdiction, there is no basis in that regulation for a right to an asylum procedure in a particular Member State chosen by the applicant for asylum. Under the system put in place by that regulation, the only parties with – actionable – rights that inhere to those parties individually in relation to the criteria for determining responsibility are the Member States. The Asylgerichtshof also draws attention to the fact that a decision of a national court indicating that another State is competent may prove to be no longer enforceable vis-à-vis that Member State on account of the time-limits set by that regulation.

39 Secondly, the Asylgerichtshof is uncertain as to whether the Hellenic Republic might be responsible if Hungary's acceptance were not to be taken into account. Referring to paragraphs 44 and 45 of the judgment in Case C-620/10 *Kastrati and Others* [2012] ECR, the Asylgerichtshof infers that Article 16(3) of Regulation No 343/2003, under which the obligations of the Member State responsible are to cease where the applicant for asylum has left the territory of the Member States for at least three months, is not applicable where an asylum application has not yet been made. It also notes that that provision is among the procedural provisions laid down in that regulation, and not in Chapter III, which lays down the substantive criteria for determining responsibility. The Asylgerichtshof also observes that, similarly, the only provision in Regulation No 1560/2003 which refers to Article 16(3) of Regulation No 343/2003 is Article 4, relating to requests for taking back, and not Article 3, which concerns requests for taking charge. Lastly, the Asylgerichtshof points out that the

need to check the route taken by the applicant for asylum and his dates of entry into and departure from EU territory is likely to take time and to raise complicated evidentiary issues, which may prolong the duration of the proceedings and the state of uncertainty for the applicant for asylum.

40 Thirdly and lastly, in the event that the Hellenic Republic is held to be the competent State in the case before it, the Asylgerichtshof observes that, if transfer to the Hellenic Republic is not possible on account of systemic deficiencies in the asylum system in that State, applicants for asylum are left with the option of choosing a destination Member State which would be responsible for the substantive aspects of implementing the asylum procedure, which would be contrary to the objectives of Regulation No 343/2003. The Asylgerichtshof wonders whether, in view of those considerations, the Hellenic Republic could be excluded from the outset, that is to say, from the stage at which the Member State responsible is determined. Another option would be to take Hungary into consideration at the time of the examination of the 'following criteria', an expression found in paragraph 96 of the judgment in *N.S. and Others* and which raises questions.

41 Having regard to those factors, the Asylgerichtshof decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 19 of Regulation No 343/2003, read in conjunction with Article 18 thereof, 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 for the purposes of the introductory part of Article 16(1) of Regulation No 343/2003, or does European Union law oblige the national review authority, where, in the course of an appeal or review procedure in accordance with Article 19(2) of Regulation No 343/2003, it comes to the view, irrespective of that agreement, that another State is the Member State responsible pursuant to Chapter III of Regulation 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 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:

   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, fewer than 12 months have elapsed since his irregular entry into the first Member State.

3. 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 for the purposes of Regulation No 343/2003, notwithstanding the judgment [in *N.S. and Others*]? In particular, can it be assumed that a stay in such a Member State cannot from the outset constitute an event establishing responsibility for the purposes of Article 10 of Regulation No 343/2003?'

Consideration of the questions referred

Question 1

42 By its first question, the referring court asks, in essence, whether Article 19(2) of Regulation No 343/2003 must be interpreted as obliging Member States to provide that an applicant for asylum is to have the right, in an appeal against a transfer decision under Article 19(1) of that regulation, to request a review of the determination of the Member State responsible, on the grounds that the criteria laid down in Chapter III of that regulation have been misapplied.

Observations submitted to the Court

43 Ms Abdullahi argues, as does the European Commission, that the appeal body must review whether the criteria for determining responsibility have been observed. Ms Abdullahi and the Commission refer to recital 4 in the preamble to Regulation No 343/2003, according to which the method for determining the Member State responsible must be based on 'objective, fair criteria both for the Member States and for the persons concerned'.

44 According to Ms Abdullahi, the setting, by Regulation No 343/2003, of objective criteria for determining the Member State responsible creates rights which inhere in the person of applicants for asylum, it being possible for them to request a review of the legality of the application of those criteria, including the factual circumstances bringing such responsibility to an end. That interpretation satisfies the requirements under Article 47 of the Charter. Moreover, Regulation No 343/2003 does not provide that such a review of legality must be restricted, for example, by limiting it to a review of whether decisions have been taken arbitrarily.

45 Also referring to Article 47 of the Charter, the Commission argues that one of the implications of the principle of an effective remedy, laid down in Article 19(2) of Regulation No 343/2003, is that an applicant for asylum may request a review of the legality of his transfer to the requested Member State, which would address the issue of whether the order of priority in which the criteria are listed in Regulation No 343/2003, or the time-limits laid down therein, have been complied with. An applicant for asylum may also set out the grounds for a belief that he might be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter in the State to which he would be transferred. If the appeal body reaches the conclusion that the contested decision is not legal, it should amend it or annul it and should itself designate the Member State which it considers to be responsible for examination of the asylum application. The Member State in which the asylum application has been lodged should then once again initiate the procedure provided for in Articles 17 to 19 of Regulation No 343/2003.

46 The Greek and Hungarian Governments, the United Kingdom and the Swiss Confederation argue, on the other hand, that, in accordance with Article 19(1) of Regulation No 343/2003, the only matters that can be considered on appeal are the decision not to examine the application and the obligation to transfer the asylum seeker. The appeal must be based on the infringement of specific rights, such as the infringement of fundamental rights in the Member State of transfer, or the protection of family unity. The Greek and Hungarian Governments emphasise, as does the United Kingdom, that investigations as to the Member State responsible or consultations with another Member State give rise to delays, whereas Regulation No 343/2003 stresses that asylum applications must be processed quickly. There is no justification for such investigations, since the objective of Regulation No 343/2003 – namely, the determination of the Member State responsible for processing the asylum application – is achieved as soon as a Member State gives its acceptance.

The Court's reply

47 The question concerns the interpretation of Regulation No 343/2003 and the rights which applicants for asylum derive from that regulation, which constitutes one of the elements of the Common European Asylum System adopted by the European Union.

48 It should be recalled in that connection that, under the second paragraph of Article 288 TFEU, regulations are of general application, they are binding in their entirety and they are directly applicable in all Member States. Accordingly, owing to their very nature and their place in the system of sources of EU law, regulations operate to confer rights on individuals which the national courts have a duty to protect (Case 34/73 *Variola* [1973] ECR 981, paragraph 8; Case C-253/00 *Muñoz and Superior Fruiticola* [2002] ECR I-7289, paragraph 27; and Joined Cases C-4/10 and C-27/10 *Bureau national interprofessionnel du Cognac* [2011] ECR I-6131, paragraph 40).

49 It is necessary to ascertain to what extent the provisions laid down in Chapter III of Regulation No 343/2003 actually confer on applicants for asylum rights which the national courts have a duty to protect.

50 It is important to observe at the outset that Regulation No 343/2003 provides for a single appeal, under Article 19(2) of that regulation. Under that provision, it is possible for the asylum seeker to bring an appeal against a decision not to examine an application and to transfer the asylum seeker to the Member State responsible, or to apply for such a decision to be reviewed. Moreover, Directive 2005/85 – which, in Chapter V thereof, describes inter alia appeal procedures in the context of the examination of asylum applications – states, in recital 29 of the preamble thereto, that it does not deal with procedures governed by Regulation No 343/2003.

51 As regards the scope of the appeal provided for in Article 19(2) of Regulation No 343/2003, that regulation must be construed not only in the light of the wording of its provisions, but also in the light of its general scheme, its objectives and its context, in particular its evolution in connection with the system of which it forms part.

52 In that regard, it should be borne in mind, first, that the Common European Asylum System was conceived in a context making it possible to assume that all the participating States, whether Member States or third States, observe fundamental rights, including the rights based on the Geneva Convention and the 1967 Protocol, and on the ECHR, and that the Member States can have confidence in each other in that regard (*N.S. and Others*, paragraph 78).

53 It is precisely because of that principle of mutual confidence that the EU legislature adopted Regulation No 343/2003 in order to rationalise the treatment of applications for asylum and to avoid blockages in the system as a result of the obligation on State authorities to examine multiple applications by the same applicant, and in order to increase legal certainty with regard to the determination of the State responsible for examining the asylum application and thus to avoid forum shopping, it being the principal objective of all these measures to speed up the handling of claims in the interests both of asylum seekers and the participating Member States (*N.S. and Others*, paragraph 79).

54 Secondly, the rules applicable to asylum applications have been, to a large extent, harmonised at EU level, most recently by Directives 2011/95 and 2013/32.

55 It follows that the rules in accordance with which an asylum seeker's application will be examined will be broadly the same, irrespective of which Member State is responsible under Regulation No 343/2003 for examining that application.

56 Furthermore, certain provisions of Regulations Nos 343/2003 and 1560/2003 attest to an intention on the part of the EU legislature to lay down, as regards the determination of the Member State responsible for examining an asylum application, organisational rules governing the relations between the Member States, like the Dublin Convention (see, by analogy, Joined Cases C-671/11 to C-676/11 *Unanimes and Others* [2013] ECR, paragraph 28, and Case C-3/12 *Syndicat OP 84* [2013] ECR, paragraph 29).

57 Thus, Article 3(2) of Regulation No 343/2003 (the 'sovereignty' clause) and Article 15(1) of that regulation (the humanitarian clause) are designed to maintain the prerogatives of the Member States in the exercise of the right to grant asylum, irrespective of the Member State responsible for the examination of an application on the basis of the criteria set out in that regulation. These are optional provisions which grant a wide discretionary power to Member States (see, to that effect, *N.S. and Others*, paragraph 65, and Case C-245/11 *K* [2012] ECR, paragraph 27).

58 By the same token, Article 23 of Regulation No 343/2003 enables the Member States to establish, on a bilateral basis, administrative arrangements between themselves concerning the practical details of the implementation of that regulation, which may relate, inter alia, to simplification of the procedures and shortening of the time-limits relating to the transmission and examination of requests to take charge of asylum seekers or to take them back. In addition, Article 14(1) of Regulation No 1560/2003 – currently Article 37 of Regulation No 604/2013 – provides that, in various situations where the Member States cannot resolve a dispute regarding the application of Regulation No 343/2003, they may have recourse to a conciliation procedure in which members of a committee representing three Member States not connected with the matter participate, but in which it is not envisaged that the applicant for asylum will even be heard.

59 Lastly, one of the principal objectives of Regulation No 343/2003 is – as can be seen from recitals 3 and 4 in the preamble thereto – the establishment of a clear and workable method for determining rapidly the Member State responsible for the processing of an asylum application so as to guarantee effective access to the procedures for determining refugee status and not to compromise the objective of the rapid processing of asylum applications.

60 In the present case, the decision at issue is the decision of the Member State in which Ms Abdullahi's asylum claim was lodged not to examine that claim and to transfer her to another Member State. That second Member State agreed to take charge of Ms Abdullahi on the basis of the criterion laid down in Article 10(1) of Regulation No 343/2003, namely, as the Member State of Ms Abdullahi's first entry into EU territory. In such a situation, in which the Member State agrees to take charge of the applicant for asylum, and given the factors mentioned in paragraphs 52 and 53 above, the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in that latter Member State, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter (see, to that effect, *N.S. and Others*, paragraphs 94 and 106, and Case C-4/11 *Puid* [2013] ECR, paragraph 30).

61 However, as is apparent from the documents placed before the Court, there is nothing to suggest that that is the position in the dispute before the referring court.

62 Having regard to the foregoing considerations, the answer to Question 1 is that Article 19(2) of Regulation No 343/2003 must be interpreted as meaning that, in circumstances where a Member State has agreed to take charge of an applicant for asylum on the basis of the criterion laid down in Article 10(1) of that regulation – namely, as the Member State of the first entry of the applicant for asylum into the European Union – the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and

in the conditions for the reception of applicants for asylum in that Member State, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

Questions 2 and 3

63 Since the other two questions were referred in case the applicant for asylum was held to have been well founded in requesting a review of the determination of the Member State responsible for her asylum application, there is no need to answer them.

Costs

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

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

Article 19(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, in circumstances where a Member State has agreed to take charge of an applicant for asylum on the basis of the criterion laid down in Article 10(1) of that regulation – namely, as the Member State of the first entry of the applicant for asylum into the European Union – the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in that Member State, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.

[Signatures]