Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

27 September 2012*

(Applications for asylum — Directive 2003/9/EC — Minimum standards for the reception of asylum seekers in the Member States — Regulation (EC) No 343/2003 — Obligation to guarantee asylum seekers minimum reception conditions during the procedure of taking charge or taking back by the responsible Member State — Determining the Member State obliged to assume the financial burden of the minimum conditions)

In Case C-179/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Conseil d'Etat (France), made by decision of 7 April 2011, received at the Court on 18 April 2011, in the proceedings

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,

THE COURT (Fourth Chamber),

composed of M. J.-C. Bonichot, President of the Chamber, A. Prechal, K. Schiemann, L. Bay Larsen (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 March 2012,

after considering the observations submitted on behalf of:

— Cimade, by P. Peugeot, President thereof, and P. Spinosi, lawyer,

— Groupe d'information et de soutien des immigrés (GISTI), by P. Peugeot and C. Pouly, lawyer,

— the French Government, by G. de Bergues and J.-S. Pilczer and by B. Beaupère-Manokha, acting as Agents,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

* Language of the case: French.

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

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

— the Polish Government, by M. Szpunar, acting as Agent,

— the Swiss Government, by J. de Watteville, acting as Agent,

— the European Commission, by M. Condou-Durande, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2012,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States (OJ 2003 L 31, p. 18) and, in particular, the scope of that directive.

2 That reference has been made in the proceedings between Cimade and the Groupe d'information et de soutien des immigrés (GISTI), on the one hand, and the Ministry for the Interior, Overseas Territories, Local and Regional Authorities and Immigration, on the other hand, regarding the legality of an inter-ministerial circular of 3 November 2009 concerning a temporary tideover allowance ('the circular of 3 November 2009').

Legal context

European Union law

Directive 2003/9

3 Recitals 5, 7 and 8 in the preamble to Directive 2003/9 state as follows:

'(5) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union [('the Charter')]. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the said Charter.

(7) Minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.

(8) The harmonisation of conditions for the reception of asylum seekers should help to limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception.'

4 Article 1 of Directive 2003/9 states that 'the purpose of this Directive is to lay down minimum standards for the reception of asylum seekers in Member States'.

5 Article 2 of Directive 2003/9, under the heading 'Definitions', states:

'For the purposes of this Directive:

…

(b) "application for asylum" shall mean the application made by a third-country national or a stateless person which can be understood as a request for international protection from a Member State, under the Geneva Convention [of 28 July 1951 relating to the status of refugees ('the Geneva Convention')]. Any application for international protection is presumed to be an application for asylum unless a third-country national or a stateless person explicitly requests another kind of protection that can be applied for separately;

(c) "applicant" or "asylum seeker" shall mean a third-country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;

…

(i) "reception conditions" shall mean the full set of measures that Member States grant to asylum seekers in accordance with this Directive;

(j) "material reception conditions" shall mean the reception conditions that include housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;

…'

6 Under the heading 'Scope', Article 3(1) of Directive 2003/9 provides:

'This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for asylum according to the national law.'

7 Under the heading 'General rules on material reception conditions and health care', Article 13(1) of Directive 2003/9 provides:

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

8 Article 16 of Directive 2003/9, headed 'Reduction or withdrawal of reception conditions' states:

'(1) Member States may reduce or withdraw reception conditions in the following cases:

(a) where an asylum seeker:

— abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or

— does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or

— has already lodged an application in the same Member State.

When the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstallation of the grant of some or all of the reception conditions;

(b) where an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.

…

(2) Member States may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in that Member State.

…

5. Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.'

Regulation (EC) No 343/2003

9 Article 1 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) provides:

'This Regulation lays down 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.'

10 Article 2 of Regulation No 343/2003 defines the concepts of 'application for asylum', 'applicant' and 'asylum seeker', in a way which is, in essence, identical to the definitions of the same concepts in Directive 2003/9. Article 2 also contains the following definitions:

'(e) "examination of an asylum application" means any examination of, or decision or ruling concerning, an application for asylum by the competent authorities in accordance with national law except for procedures for determining the Member State responsible in accordance with this Regulation;

…

j) "residence document" means any authorisation issued by the authorities of a Member State authorising a third-country national to stay in its territory, including the documents substantiating the authorisation to remain in the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the responsible Member State as established in this Regulation or during examination of an application for asylum or an application for a residence permit;

…'

11 Article 3(1) of Regulation No 343/2003, which is contained in Chapter II thereof, headed ‘General principles’, 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 Under Article 4 of that regulation, which is also part of Chapter II thereof:

‘1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for asylum is first lodged with a Member State.

2. An application for asylum shall be deemed to have been lodged once a form submitted by the applicant for asylum or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

…

4. Where an application for asylum is lodged with the competent authorities of a Member State by an applicant who is in the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for asylum was lodged.

The applicant shall be informed in writing of this transfer and of the date on which it took place.

5. An asylum seeker who is present in another Member State and there lodges an application for asylum after withdrawing his application during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Article 20, by the Member State with which that application for asylum was lodged, with a view to completing the process of determining the Member State responsible for examining the application for asylum.

This obligation shall cease, if the asylum seeker has in the meantime left the territories of the Member States for a period of at least three months or has obtained a residence document from a Member State.’

13 Chapter V of Regulation No 343/2003 provides for detailed rules in relation to the taking charge and taking back of the asylum seeker. Article 16 of the regulation provides:

‘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;

(c) take back, under the conditions laid down in Article 20, an applicant whose application is under examination and who is in the territory of another Member State without permission;

(d) take back, under the conditions laid down in Article 20, an applicant who has withdrawn the application under examination and made an application in another Member State;

(e) take back, under the conditions laid down in Article 20, a third-country national whose application it has rejected and who is in the territory of another Member State without permission.

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.

4. The obligations specified in paragraph 1(d) and (e) shall likewise cease once the Member State responsible for examining the application has adopted and actually implemented, following the withdrawal or rejection of the application, the provisions that are necessary before the third-country national can go to his country of origin or to another country to which he may lawfully travel.'

14 Article 17 of Regulation No 343/2003 lays down the procedure to follow when calling upon another Member State to take charge of the asylum seeker. Articles 17(1) and 17 (2) state as follows:

'1. 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 within the meaning of Article 4(2), call upon the other Member State to take charge of the applicant.

Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for asylum shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for asylum was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and/or where the asylum seeker is held in detention.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. This period shall be at least one week.'

15 According to Article 18 of Regulation No 343/2003:

'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.

…

6. Where the requesting Member State has pleaded urgency, in accordance with the provisions of Article 17(2), the requested Member State shall make every effort to conform to the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give the reply after the time-limit requested, but in any case within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

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.'

16 Article 19 of Regulation No 343/2003, which provides for time-limits for carrying out the transfer of the asylum seeker, states as follows:

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

2. The decision referred to in paragraph 1 shall set out the grounds on which it is based. 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.

…’

17 The rules governing the taking back of the asylum seeker are laid down in Article 20 of Regulation No 343/2003, which sets out the information which the request for the asylum seeker to be taken back must contain, the conditions applicable to the reply to that request, the period within which the reply must be made and the procedures for the transfer of the asylum seeker.

Directive 2005/85/EC

18 Recital 29 in the preamble to 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), states as follows:

‘(29) This Directive does not deal with procedures governed by … Regulation … No 343/2003 … .’

19 Article 2 of Directive 2005/85/EC defines the concepts of ‘application for asylum’, ‘applicant’ and ‘asylum seeker’, in a way which is, in essence, identical to the definitions of the same concepts in Directive 2003/9 and Regulation No 343/2003. Article 2(k) also defines the following expression:

‘“remain in the Member State” means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for asylum has been made or is being examined.’

20 In Chapter II of Directive 2005/85, headed 'Basic Principles and Guarantees', Article 7(1), under the heading 'Right to remain in the Member State pending the examination of the application', provides:

'Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.'

21 Article 35 of Directive 2005/85 provides:

'1. Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on applications made at such locations.

2. However, when procedures as set out in paragraph 1 do not exist, Member States may maintain, subject to the provisions of this Article and in accordance with the laws or regulations in force on 1 December 2005, procedures derogating from the basic principles and guarantees described in Chapter II, in order to decide at the border or in transit zones as to whether applicants for asylum who have arrived and made an application for asylum at such locations, may enter their territory.

3. The procedures referred to in paragraph 2 shall ensure in particular that the persons concerned:

(a) are allowed to remain at the border or transit zones of the Member State, without prejudice to Article 7;

…'

Regulation (EC) No 1560/2003

22 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) provides in Article 8, headed 'Cooperation on transfers', as follows:

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

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

Decision No 573/2007/EC

23 Recital 13 in the preamble to Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC (OJ 2007 L 144, p. 1), states:

'This Decision is designed to form part of a coherent framework, which also includes Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007-2013 as part of the General programme "Solidarity and Management of Migration Flows", Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008-2013 as part of the General programme "Solidarity and Management of Migration Flows" and Council Decision 2007/.../EC of ... establishing the European Fund for the Integration of Third-country Nationals for the period 2007-2013 as part of the General programme "Solidarity and Management of Migration Flows", which aims to address the issue of fairly sharing responsibilities between Member States as concerns the financial burden arising from the introduction of integrated management of the European Union's external borders and from the implementation of common policies on asylum and immigration, as developed in accordance with Title IV of Part Three of the [EC] Treaty.'

24 Article 2 of Decision No 573/2007, under the heading 'General objective of the Fund', provides:

'1. The general objective of the Fund shall be to support and encourage the efforts made by the Member States in receiving, and in bearing the consequences of receiving, refugees and displaced persons, taking account of Community legislation on those matters, by co-financing the actions provided for in this Decision.

2. The Fund shall contribute to the financing of technical assistance at the initiative of the Member States or the Commission.'

25 Article 3(1) of Decision No 573/2007, headed 'Eligible actions in the Member States', provides:

'The Fund shall support actions in Member States relating to one or more of the following:

(a) reception conditions and asylum procedures;

...'

French law

Code de l'entrée et du séjour des étrangers et du droit d'asile

26 According to Article L.723-1 of the Code de l'entrée et du séjour des étrangers et du droit d'asile (Code on the Entry and Residence of Foreign Nationals and the Right of Asylum; 'the Ceseda'):

'The office [Office français de protection des refugiés et apatrides – French office for the protection of refugees and stateless persons; ('OFPRA')] shall rule on the applications for asylum submitted to it. It is not however competent to consider an application presented by a person whose application to stay on French territory was refused on the basis of Article L.741-4(1).

...'

27 Article L.741-4 of the Ceseda provides:

‘Subject to compliance with the provisions of Article 33 of the [Geneva Convention], the entry into France of a foreign national requesting asylum may be refused only if:

(1) The examination of the asylum application falls within the competence of another State in application of the provisions of [Regulation No 343/2003] or pursuant to undertakings identical to those provided for by that regulation with other States;

…’

28 Article L-742-1 of the Ceseda states

‘Where an asylum seeker is authorised to reside in France on the basis of chapter 1 of this title, he is to be provided with a provisional residence document allowing him to lodge an application for asylum with [OFPRA]. The matter may not be brought before [OFPRA] until the applicant has been provided with that document. After his asylum claim has been lodged, a new provisional residence document shall be issued to the applicant. That document shall be renewed until the office makes its ruling and, if an action is brought before the Cour nationale du droit d’asile (National Court for Asylum Law), until that court makes its ruling’

Code de l’action sociale et des familles

29 Article L.348-1 of the Code de l’action sociale et des familles (Code on Social Action and Families) provides that ‘foreign nationals in possession of one of the residence documents referred to in Article L.742-1 of the [Ceseda] shall be entitled, on request, to social assistance for the purposes of their reception in reception centres for asylum seekers.’

Code du travail

30 Article L.5423-8 of the Code du Travail (Labour Code) provides:

‘Subject to the provisions of Article L.5423-9, the following persons shall be entitled to a temporary tideover allowance [*allocation temporaire d’attente* (‘ATA’)]:

(1) foreign nationals in possession of a residence permit or an acknowledgment of receipt of their residence permit application which refers to the fact that they have sought asylum in France and who have submitted a request to be granted refugee status, provided that they satisfy the conditions regarding age and resources;

…’

31 According to Article L.5423-9 of the Code du Travail:

‘The following persons shall not be entitled to the [ATA]:

(1) Asylum seekers who, following a rejection decision which has become final, submit to [OFPRA] a request that their claim be re-examined, with the exception of cases of humanitarian concern identified by [OFPRA] pursuant to the conditions laid down by law;

…’

32 Article L.5423-11 of the Code du Travail states as follows:

'The [ATA] shall be paid monthly, at the end of each month, to persons whose applications for asylum have not been finally decided upon.

Payment of the allowance shall cease at the end of the month following that in which the final decision on the application for asylum was notified.'

The circular of 3 November 2009

33 The circular of 3 November 2009, concerning the recipients of ATA, states inter alia, in its first part:

'I. Asylum seekers

In accordance with [Directive 2003/9], the ATA is a subsistence benefit payable to asylum seekers throughout the procedure during which their application is being examined, where they satisfy the following conditions.

I.1. Conditions for award of the ATA

Subject to the exclusions mentioned in point I.2, and to the condition relating to resources being satisfied, ATA shall be payable to foreign nationals:

— aged 18 years or over;

— who have lodged an application for asylum with the OFPRA and are in possession of a letter from OFPRA informing them of the registration of their application;

— whose application for asylum has not yet been finally decided upon by OFPRA or by the Cour nationale du droit d'asile (National Court for Asylum Law; 'CNDA')];

— who hold a residence permit or an acknowledgment of receipt of their residence permit application which refers to the fact that they have sought asylum in France; that condition is not applicable to nationals of countries considered to be safe countries of origin … or countries in respect of which Article 1C.(5) of the Geneva Convention was implemented, in relation to which OFPRA's registration letter suffices.

…

I.2. Grounds for exclusion from eligibility for the ATA

…

I.2.2. Other grounds for exclusion ...

…

Asylum seekers are not eligible for ATA where they have been refused residence in accordance with the provisions laid down in Article L.741-4(1), (3) or (4) of the Ceseda. Those affected are:

(1) persons whose application for asylum falls within the competence of another European State in application of the provisions of [Regulation No 343/2003], Dublin II';

…'

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

34 On 26 January 2010 the Cimade and the GISTI applied to the Conseil d'État (Council of State), seeking to have the circular of 3 November 2009 annulled. They submit that that circular is contrary to the objectives of Directive 2003/9 in so far as it excludes asylum seekers from entitlement to the ATA where, in application of Regulation No 343/2003, the French Republic calls upon another Member State, which it considers is responsible for the application by the persons concerned, to take charge of them or take them back.

35 Considering that the response to that submission required an interpretation of the relevant provisions of European Union law, the Conseil d'État decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does … Directive 2003/9 …guarantee the minimum reception conditions to which it refers to applicants in respect of whom a Member State in receipt of an application for asylum decides, under [Regulation No 343/2003], to refer a request to another Member State which it deems to have jurisdiction to examine that asylum application, throughout the duration of the procedure for taking charge of them or for taking them back by that other Member State?

(2) If the answer to that question is in the affirmative:

(a) Does the obligation, incumbent on the first Member State, to guarantee the minimum reception conditions cease at the moment of the acceptance decision by the State to which the referral was made, upon the actual taking charge or taking back of the asylum seeker, or at some other date?

(b) Which Member State should thus assume the financial burden of providing the minimum reception conditions during that period?'

Consideration of the questions referred

The first question

36 By its first question, the referring court asks, in essence, whether a Member State to which an application for asylum has been made at its border or in its territory, is also obliged to grant the minimum reception conditions for reception of asylum seekers 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 the person concerned.

37 In that regard, it must be stated at the outset that the scope of Directive 2003/9 is defined in Article 3 thereof, according to which the directive applies to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State, as long as they are allowed to remain on the territory as asylum seekers.

38 Thus, the first condition which must be satisfied for Directive 2003/9 to apply is that an application for asylum must have been made at the border or in the territory of a Member State. In that regard, Article 2(b) of Directive 2003/9 states that 'application for asylum' is to mean 'the application made by a third-country national or a stateless person which can be understood as a request for international protection from a Member State, under the Geneva Convention' and that '[a]ny application for international protection is presumed to be an application for asylum unless a third-country national or a stateless person explicitly requests another kind of protection that can be applied for separately'. The definition of the concept of an application for asylum stated in Article 2(c) of Regulation No 343/2003 is, in essence, identical to that mentioned above.

39 Regarding the period during which the material reception conditions, that is to say, housing, food and clothing plus a daily expenses allowance, must be granted to the applicants, Article 13(1) of Directive 2003/9 provides that that period is to begin when the asylum seeker applies for asylum.

40 Furthermore, it follows from Articles 2 and 3 of Directive 2003/9 that the directive provides for only one category of asylum seekers, comprising all third-country nationals or stateless persons who make an application for asylum. No provision can be found in the directive such as to suggest that an application for asylum can be regarded as having been lodged only it if is submitted to the authorities of the Member State responsible for the examination of that application.

41 Such an interpretation is also confirmed by Article 4(1) of Regulation No 343/2003, according to which the process of determining the Member State responsible under this Regulation is to start as soon as an application for asylum is first lodged with a Member State. That provision must therefore mean that an application for asylum is made before the process of determining the Member State responsible begins.

42 The provisions of Directive 2003/9 must also be interpreted in the light of the general scheme and purpose of the directive and, in accordance with recital 5 in the preamble to that directive, while respecting the fundamental rights and observing the principles recognised in particular by the Charter. According to that recital, the directive aims in particular to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the Charter.

43 Thus, those requirements apply not only with regard to asylum seekers present in the territory of the Member State responsible pending that State's decision on their application for asylum but also to asylum seekers awaiting a decision on which Member State will be held responsible for their application.

44 In that regard, it cannot reasonably be argued that the minimum reception standards for asylum seekers do not apply to those among them subject to the procedure for determination of the Member responsible, on the ground that it is a swift procedure. It is apparent from Articles 17 and 18 of Regulation No 343/2003 that, for a usual procedure, five months may elapse between the date when the application for asylum is lodged and that on which the requested Member State rules on the request to take charge of the asylum seeker. To that period must be added the period of time necessary for implementing the transfer, which, according to Article 19 of Regulation 343/2003, is usually six months from the acceptance of the request to take charge.

45 In addition, the procedure put in place by Regulation No 343/2003 may in certain cases result in the asylum seeker never being transferred to the requested Member State, the applicant thus remaining in the Member State in which he lodged his application for asylum. The time-limits laid down in Articles 17 to 20 of that regulation concern only the situation in which the requested Member State accepts the taking charge or taking back or does not reply to the request by the requesting Member State. Where the requested Member State replies in the negative, the legislation in question provides only for a voluntary conciliation procedure. In such situations, a temporary stay by the asylum seeker in the territory of the requesting Member State may stretch to a very long period. To exclude from entitlement to minimum reception standards for asylum seekers those applicants subject to the procedure for determination of the Member State responsible cannot, therefore, be justified by the length of the procedure.

46 The second condition for application of Directive 2003/9 is that asylum seekers must be allowed to remain in the territory of the Member State concerned as asylum seekers. In that regard, the French Government cannot usefully argue that, since recital 29 in the preamble to Directive 2005/85 makes it clear that Directive 2005/85 does not apply to applications falling under Regulation No 343/2003, the right conferred on an asylum seeker by Article 7(1) of Directive 2005/85 to remain in the Member State for the purposes of the examination of his application cannot apply to such an asylum seeker where he is subject to the procedure for the determination of the Member State responsible provided for by that regulation.

47 According to Article 2(k) of Directive 2005/85, the expression 'remain in the Member State' must be understood as the fact of remaining in the territory, including at the border or in transit zones, not only of the Member State in which the application for asylum is being examined, but also in that in which it was lodged.

48 It must therefore be concluded that asylum seekers are allowed to remain not only in the territory of the Member State in which the application for asylum is being examined but also in that of the Member State in which that application was lodged, as required by Article 3(1) of Directive 2003/9.

49 Recital 29 in the preamble to Directive 2005/85 is not such as to impugn that interpretation, that recital referring only to the fact that the procedures established by that directive for the grant or withdrawal of refugee status in the Member States are to be distinguished from the procedures laid down in Regulation No 343/2003 for determining the Member State responsible for examining an application for asylum.

50 Accordingly, the answer to the first question is that Directive 2003/9 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 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.

Second question

51 By its second question, the referring court seeks to ascertain, first, when 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 ceases, with regard 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; second, it wishes to know which Member State should assume the financial burden of providing those minimum conditions.

52 With regard to the duration of the obligation to grant the minimum reception conditions, it should be recalled, first, as was stated in paragraphs 36 and 37 above, that the personal scope of Directive 2003/9 encompasses any asylum seeker who has lodged an application for asylum for the first time with a Member State.

53 Second, in accordance with Articles 2(c) of Directive 2003/9 and 2(d) of Regulation No 343/2003, an applicant or an asylum seeker is defined as a third-country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken. The applicant thus retains his status as asylum seeker within the meaning of that directive as long as no final decision has been taken.

54 Third, it follows from Articles 17 to 19 of Regulation No 343/2003 that the mere request by a Member State in receipt of an application for asylum for the taking charge of the applicant concerned by another Member State does not bring the examination of the application for asylum by the requesting Member State to an end. Even where the requested Member State accepts that taking charge, the fact nevertheless remains that, in accordance with Article 19(4) of Regulation No 343/2003, the responsibility for the examination of the application for asylum falls to the Member State with which that application was lodged, if the transfer is not carried out within the six-month period. Furthermore, as stated in paragraph 44 above, where the requested Member State replies in the negative, the legislation in question provides only for a voluntary conciliation procedure and, in such a case, it cannot be excluded that the asylum seeker will remain in the territory of the requesting Member State.

55 It can be concluded from the above that neither the decision of a Member State to call upon another Member State which it considers responsible for the examination of the application for asylum for the purposes of taking charge of the asylum seeker nor the acceptance of that request by the Member State requested is a final decision within the meaning of Directive 2003/9. It follows that only the actual transfer of the asylum seeker by the requesting Member State brings to an end the examination of the application for asylum by that State and its responsibility for granting the minimum reception conditions.

56 In addition, further to the general scheme and purpose of Directive 2003/9 and the observance of fundamental rights, in particular the requirements of Article 1 of the Charter, under which human dignity must be respected and protected, the asylum seeker may not, as stated in paragraphs 41 to 44 above, be deprived – even for a temporary period of time after the making of the application for asylum and before being actually transferred to the responsible Member State – of the protection of the minimum standards laid down by that directive.

57 Only in the cases listed in Article 16 of Directive 2003/9 may the reception conditions laid down in that directive be reduced or withdrawn where the asylum seeker does not comply with the reception rules provided for by the Member State concerned.

58 It follows from the above that the obligation for the Member State in receipt of an application for asylum at its border or in its territory to grant the minimum conditions laid down by 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 only when that applicant has actually been transferred by the requesting Member State.

59 Concerning the question which Member State is to assume the financial burden of providing those minimum conditions, it must be noted that the financial burden linked to requirements arising from the need for a Member State to comply with European Union law is usually assumed by the Member State which is subject to the obligation to satisfy those requirements, that is to say, in a case such as that in the main proceedings, the Member State which is bound to ensure the minimum reception conditions laid down by Directive 2003/9, in accordance with what was stated in the previous paragraph, unless European Union legislation provides otherwise. In the absence of contrary provisions in that regard either in Directive 2003/9 or Regulation No 343/2003, it must be held that the financial burden of providing those minimum conditions is to be assumed by the Member State which is subject to that obligation.

60 It should furthermore be added that, with a view to responding to the need to share responsibilities fairly between Member States as concerns the financial burden arising from the implementation of common policies on asylum and immigration – a need which can in particular manifest itself in the case of major migration flows – the European Refugee Fund, established by Decision No 573/2007/EC as part of the General programme 'Solidarity and Management of Migration Flows', provides for the possibility of financial assistance being offered to the Member States with regard, inter alia, to reception conditions and asylum procedures.

61 Accordingly, the answer to the second question is that 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.

Costs

62 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 (Fourth Chamber) hereby rules:

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.**

[Signatures]