

JUDGMENT OF THE COURT (Grand Chamber)

7 June 2016 (*)

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national — Article 18 — Taking back an asylum seeker whose application is being examined — Article 19 — Cessation of responsibility — Absence from the territory of the Member States for a period of at least three months — New procedure for determining the Member State responsible — Article 27 — Remedy — Extent of judicial review)

In Case C-155/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kammarrätten i Stockholm – Migrationsöverdomstolen (Administrative Court of Appeal, Stockholm, Court of Appeal in Immigration Matters, Sweden), made by decision of 27 March 2015, received at the Court on 1 April 2015, in the proceedings

George Karim

v

Migrationsverket,

THE COURT (Grand Chamber),

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

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 December 2015,

after considering the observations submitted on behalf of:

- Mr Karim, by I. Aydin, advokat, and C. Hjorth, jur. kand.,
- the Migrationsverket, by H. Hedebris and M. Bergdahl, acting as Agents,
- the Swedish Government, by A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren, E. Karlsson and L. Swedenborg, acting as Agents,
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the Greek Government, by M. Michelogiannaki, acting as Agent,
- the French Government, by F.X. Bréchet and D. Colas, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and B. Koopman, acting as Agents,
- the Swiss Government, by C. Bichet, acting as Agent,
- the European Commission, by M. Condou-Durande, C. Tufvesson, and M.K. Simonsson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 March 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 19 and 27 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

2 The request has been made in proceedings between Mr George Karim, a Syrian national, and the Migrationsverket (Migration Board, Sweden; ‘the Board’) concerning the latter’s decision to reject Mr Karim’s application for a residence permit and to transfer him to Slovenia.

Legal context

3 Recital 19 of Regulation No 604/2013 states:

‘In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.’

4 Article 18(1) of that regulation provides:

‘The Member State responsible under this Regulation shall be obliged to:

...

(b) take back, under the conditions laid down in Articles 23, 24, 25 and 29, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;

...’

5 Article 19(2) of that regulation provides:

‘The obligations specified in Article 18(1) shall cease where the Member State responsible can establish, when requested to take charge or take back an applicant ... that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.’

An application lodged after the period of absence referred to in the first subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.’

6 Article 27(1) and (5) of that regulation states the following:

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

...

5. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.’

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

7 Mr Karim applied for international protection in Sweden on 3 March 2014.

8 As a search in the Eurodac system revealed that he had already applied for that protection in Slovenia on 14 May 2013, the Board, on 20 March 2014, requested the Slovenian authorities to take Mr Karim back on the basis of Article 18(1)(b) of Regulation No 604/2013.

9 The Slovenian authorities agreed to that take-back request on 3 April 2014. The Board then informed those authorities that Mr Karim had claimed that he had left the territory of the Member States for more than three months following his first asylum application and that his passport had an entry visa for Lebanon dated 20 July 2013. Following an exchange of letters, the Slovenian authorities on 12 May 2014 repeated their acceptance of the take-back request.

10 On 13 May 2014, the Board rejected Mr Karim’s application for a residence permit, including his application for international protection, closed the case relating to the status declaration and decided to transfer him to Slovenia.

11 Mr Karim challenged the Board’s decision before the Förvaltningsrätten i Stockholm (Administrative Court, Stockholm, Sweden). That court dismissed his action on the ground that, in the case where a Member State agrees to take back an asylum applicant, the latter may challenge his transfer to that Member State only by pleading the existence of systemic deficiencies.

12 Mr Karim contested the judgment of the Förvaltningsrätten i Stockholm (Administrative Court, Stockholm) before the referring court, claiming, firstly, that the Republic of Slovenia is not the Member State responsible for examining his asylum application, inasmuch as he left the territory of the Member States for more than three months after his first asylum application, and, secondly, that for humanitarian reasons his transfer should not proceed and that the asylum procedure in Slovenia has systemic deficiencies.

13 In those circumstances, the Kammarrätten i Stockholm – Migrationsöverdomstolen (Administrative Court of Appeal, Stockholm, Court of Appeal in Immigration Matters) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Do the new provisions on the right to an effective remedy set out in Regulation No 604/2013 (recital 19 and Article 27(1) and (5)) mean that an asylum applicant is also to be given the opportunity to challenge [the implementation of] the criteria in Chapter III of Regulation No 604/2013 on the basis of which he or she is transferred to another Member State which has agreed to receive him or her? Alternatively, can the right to an effective remedy be limited to mean only the right to an examination of whether there are systemic deficiencies in the asylum procedure and the reception conditions in the Member State to which the applicant is to be transferred [as the Court of Justice held in the judgment of 10 December 2013 in *Abdullahi*, C-394/12, EU:C:2013:813]?’

(2) In the event that the Court should consider that it is possible to challenge [the implementation of] the criteria in Chapter III of Regulation No 604/2013, does Article 19(2) of Regulation No 604/2013 mean that that regulation may not be applied where the asylum applicant shows that he or she has been outside the territory of the Member States for at least three months?’

Consideration of the questions referred

The second question

14 By its second question, which it is appropriate to examine first, the referring court asks, in essence,

whether Article 19(2) of Regulation No 604/2013 must be interpreted to the effect that that provision, in particular its second subparagraph, applies to a third-country national who, after having made a first asylum application in a Member State, provides evidence that he left the territory of the Member States for a period of at least three months before making a new asylum application in another Member State.

- 15 In that respect, it is true that the first subparagraph of Article 19(2) of Regulation No 604/2013 provides that, in principle, the obligations to take charge of or take back an asylum applicant arising under Article 18(1) of that regulation cease if the Member State responsible can establish, when requested to take back an asylum applicant, that the person concerned left the territory of the Member States for a period of at least three months.
- 16 However, the second subparagraph of Article 19(2) of that regulation states that an application lodged after such a period of absence is to be regarded as a new application giving rise to a new procedure for determining the Member State responsible.
- 17 It follows that, in a situation in which a third-country national, having made a first asylum application in a Member State, left the territory of the Member States for a period of at least three months before making a new asylum application in another Member State, Article 19(2) of Regulation No 604/2013 requires the Member State in which the new asylum application has been made to complete, on the basis of the rules laid down in that regulation, the process for determining the Member State responsible for examining that new application.
- 18 Consequently, the answer to the second question is that Article 19(2) of Regulation No 604/2013 must be interpreted to the effect that that provision, in particular its second subparagraph, is applicable to a third-country national who, after having made a first asylum application in a Member State, provides evidence that he left the territory of the Member States for a period of at least three months before making a new asylum application in another Member State.

The first question

- 19 By its first question, the referring court asks, in essence, whether Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, must be interpreted to the effect that, in a situation such as that at issue in the main proceedings, an asylum applicant may, in an action challenging a transfer decision made in respect of him, invoke the incorrect application of the criteria for determining responsibility, set out in Chapter III of that regulation.
- 20 As a preliminary point, it must be stated that it is clear from the order for reference that the applicant in the main proceedings, in his action challenging the transfer decision made in regard to him, relies, not on an infringement of one of the rules set out in Chapter III of Regulation No 604/2013, but rather on the contention that the responsibility of the Republic of Slovenia has been determined in disregard of the specific rules, set out in Article 19(2) of that regulation, relating to the situation of a third-country national who, after having made a first asylum application in a Member State, left the territory of the Member States for a period of at least three months before making a new asylum application in another Member State.
- 21 Consequently, in order to provide the referring court with a useful answer, it is necessary to determine whether Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, must be interpreted to the effect that, in a situation such as that at issue in the main proceedings, an asylum applicant may, in an action challenging a transfer decision made in respect of him, invoke an infringement of the rules set out in Article 19(2) of that regulation.
- 22 In that regard, it must be stated that it is clear from paragraphs 30 to 61 of the judgment of 7 June 2016 in *Ghezelbash* (C-63/15) that Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, provides an asylum applicant with an effective remedy against a transfer decision made in respect of him, which may, inter alia, concern the examination of the application of that regulation and which may therefore result in a Member State's responsibility being called into question, even where there are no systemic deficiencies in the asylum process or in the reception conditions for asylum applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the

meaning of Article 4 of the Charter of Fundamental Rights of the European Union.

- 23 Furthermore, although the application of Regulation No 604/2013 is based essentially on that process that is conducted to establish the Member State responsible, designated on the basis of the criteria set out in Chapter III of that regulation (judgment of 7 June 2016 in *Ghezelbash*, C-63/15, paragraph 41), it must be stated that the rule set out in the second subparagraph of Article 19(2) of that regulation establishes the framework within which that process must be conducted when the third-country national in question, after having made a first asylum application in a Member State, left the territory of the Member States for a period of at least three months before making a new asylum application in another Member State.
- 24 As has been pointed out in paragraph 17 above, it follows from that provision that in such a situation the Member State in which the new asylum application was made is required to complete the process for determining the Member State responsible for examining that new application.
- 25 That new determination process is distinct from the one conducted initially by the Member State in which the first asylum application was made and may result in the designation of a new responsible Member State on the basis of the criteria set out in Chapter III of Regulation No 604/2013.
- 26 Consequently, in order to satisfy itself that the contested transfer decision was adopted following a proper application of the process for determining the Member State responsible laid down in that regulation, the court dealing with an action challenging a transfer decision must be able to examine the claims made by an asylum applicant who invokes an infringement of the rule set out in the second subparagraph of Article 19(2) of that regulation.
- 27 In the light of all the foregoing considerations, the answer to the first question is that Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, must be interpreted to the effect that, in a situation such as that at issue in the main proceedings, an asylum applicant may, in an action challenging a transfer decision made in respect of him, invoke an infringement of the rule set out in the second subparagraph of Article 19(2) of that regulation.

Costs

- 28 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), rules as follows:

- 1. Article 19(2) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted to the effect that that provision, in particular its second subparagraph, is applicable to a third-country national who, after having made a first asylum application in a Member State, provides evidence that he left the territory of the Member States for a period of at least three months before making a new asylum application in another Member State.**
- 2. Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, must be interpreted to the effect that, in a situation such as that at issue in the main proceedings, an asylum applicant may, in an action challenging a transfer decision made in respect of him, invoke an infringement of the rule set out in the second subparagraph of Article 19(2) of that regulation.**

[Signatures]

* Language of the case: Swedish.