

CJEU - C-394/12, Shamso Abdullahi v Bundesasylamt

Country of Applicant:

Somalia

Date of Decision:

10-12-2013

Citation:

C-394/12

Court Name:

Grand Chamber of the CJEU

Keywords:[Dublin Transfer](#) [1][Effective access to procedures](#) [2][Effective remedy \(right to\)](#) [3]**Relevant Legislative Provisions:**

International Law

International Law > [1951 Refugee Convention](#) [4]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [5] > Recital 29European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [5]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [6] > [Recital \(3\)](#) [7]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [6] > [Recital \(4\)](#) [8]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [6] > [Article 3](#) [10]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [6] > [Article 3](#) [10] > [1.](#) [11]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [12] > [Article 18](#) [13]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [6] > [Article 10](#) [14]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [6] > [Article 13](#) [15]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [16]

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [6] > [Article 16](#) [17]

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European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [6] > [Article 18](#) [19]

Headnote:

This ruling concerned the scope of judicial review when reviewing compliance with the criterion of Article 10(1) for determining responsibility for examining an asylum application under Regulation 343/2003. The Court held that Art. 19(2) of the Regulation 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 Art. 10(1) criterion 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 Art. 4 of the Charter.

Facts:

Ms Abdullahi is a Somali national who entered Syria by air in April 2011 and then travelled to Turkey before entering Greece illegally. She then travelled on with smugglers to Austria via the Former Yugoslav Republic of Macedonia, Serbia and Hungary. She was arrested in Austria, close to the Hungarian border and then lodged an asylum application. Firstly the Bundesasylamt, the competent authority, requested Hungary to take charge of Ms. Abdullahi on the basis of Art. 10(1) of Regulation 343/2003. Hungary accepted and her removal was ordered. Upon appeal the Asylgerichtshof overturned the Bundesasylamt's decision on account of procedural flaws. The Bundesasylamt then reviewed the decision and still pursued transfer to Hungary. A further appeal was brought but this time Ms Abdullahi claimed that the Member State responsible was Greece and not Hungary. She argued that as she could not be sent back there and accordingly Austria had to examine her asylum application. The Asylgerichtshof declared the appeal unfounded and therefore Ms Abdullahi brought an appeal before the Verfassungsgerichtshof (Constitutional Court). The Verfassungsgerichtshof set aside the judgment of the Asylgerichtshof on the ground that the Court should have referred to the Court of Justice for the preliminary ruling. Following that the Asylgerichtshof decided to stay the proceedings and sent questions to the Court for a preliminary ruling.

Decision & Reasoning:

The questions put to the Court were as follows:

(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 of the European Court of Justice ? in Joined Cases C?411/10 and C?493/10 [*NS and Others* [2011] ECR I?0000]? 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?

The Grand Chamber of the Court first dealt with Question 1 holding that the referring Court was asking, in essence, whether Art. 19(2) must be interpreted as obliging States to provide that an applicant is to have a right, in an appeal under Art. 19(1), 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 had been misapplied (para 42). The Court referred to Art. 288 TFEU in stating that regulations operate to confer rights on individuals which the national courts have a duty to protect. The Court held it was necessary to ascertain to what extent the provisions in Chapter III of the regulation actually confer on applicants rights which the national courts have a duty to protect. It noted that the regulation provides for a single appeal and that the regulation must be read in light of its general scheme, objectives and context and in particular its evolution in connection with the system of which it forms part. It referred to the principle of mutual confidence in the CEAS and the reason why the Regulation was established in order to avoid blockages in the system, increase legal certainty and avoid forum shopping as well as the principle objective of all these measures to speed up the handling of claims in the interests both of asylum seekers and the participating Member States.

The Court went on to take into account the organisational rules in the Dublin Regulation and its implementing regulation 1560/2003 as well as the purpose of the humanitarian and discretionary provisions to ?maintain the prerogatives of the Member States in the exercise of the right to grant asylum? (Para. 57) and that they are optional provisions which grant a wide discretionary power to Member States. It also referred to Art. 23 which enables Member States to establish administrative arrangements on a bilateral basis as well as Art. 14(1) of Regulation 1560/2003 (and its equivalent provision Art. 37 in the Dublin Regulation recast No. 604/2013) on the conciliation procedure

between Member States but in which it is not envisaged that the applicant for asylum will even be heard (Para. 58).

The Court stressed the principal objective of the Regulation in recitals 3 and 4 of the preamble of rapid process of determination so as to guarantee effective access to the asylum procedure and not to compromise the objective of the rapid processing of asylum applications. 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 the claim and to transfer her to another Member State. That Member State agreed to take charge of Ms. Abdullahi under Art. 10 (1) of Regulation No. 343/2003. The Court held *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 i.e. the CEAS, mutual confidence and the objective of measures to speed up the handling of claims], 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 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 Art. 4 of the Charter?* (para 60). The Court noted that however that from the documents placed before the Court, there is nothing to suggest that that is the position in the dispute before the referring Court. Therefore, the Court held that the answer to Question 1 is that Art. 19(2) 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 in that Member State, which provide substantial grounds for believing that the asylum applicant would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Art. 4 of the Charter. Since the other two questions were on the basis that the applicant was held to have been well founded in requesting a review of the determination of the Member State responsible for her asylum application, the Court held that there was no need to answer them.

Outcome:

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.

Observations/Comments:

This case should be considered in light of the fact that it concerns the interpretation of Art. 19 with reference to the criteria only under Art. 10 (1) on irregular entry. Also on the 1st January 2014 the Dublin III Regulation (Regulation 604/2013) will be applicable and supersede this ruling and the recast Regulation requires Member States to ensure 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.

Case Law Cited:

CJEU - C-4/11, Bundesrepublik Deutschland v Kaveh Puid

CJEU - C-3/12, Syndicat OP 84 v Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)

CJEU - C-671/11 to C-676/11, Établissement national des produits de l'agriculture et de la mer (FranceAgriMer) v Société anonyme d'intérêt collectif agricole Unanimes

CJEU - C-4/10 and C-27/10, Bureau national interprofessionnel du Cognac v Gust. Ranin Oy.

CJEU - C-253/00, Antonio Muñoz y Cia SA and Superior Fruticola SA v Frumar Ltd and Redbridge Produce Marketing Ltd.

CJEU - C-34/73, Fratelli Variola S.p.A. v Amministrazione italiana delle Finanze

[CJEU - C-245/11 K v Bundesasylamt](#) [20]

[CJEU - C-620/10 Migrationsverket v Nurije Kastrati, Valdrina Kastrati, Valdrin Kastrati](#) [21]

CJEU - C-411/10 and C-493/10 N.S. v Secretary of State for the Home Department and ME (UP)

[ECtHR - MSS v Belgium and Greece \(Application no. 30696/09\) - resource](#) [22]

Attachment(s):



[Original judgment - C-394.12.pdf](#)[23]

Authentic Language:

German

Country of preliminary reference:

Austria

National / Other Legislative Provisions:

Commission Regulation (EC) No 1560/2003 - Art 3

Commission Regulation (EC) No 1560/2003 - Art 4

Commission Regulation (EC) No 1560/2003 - Art 5

Commission Regulation (EC) No 1560/2003 - Art 14

TFEU - Art 288

TFEU - Art 78

Austria - Bundesgesetz über die Gewährung von Asyl (Federal Law on Granting Asylum) BGBl. I. 100/2005

Links:

- [1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1213
- [2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A11
- [3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30
- [4] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [5] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>
- [6] <https://www.asylumlawdatabase.eu/node/19>
- [7] https://www.asylumlawdatabase.eu/node/19#toc_15
- [8] https://www.asylumlawdatabase.eu/node/19#toc_16
- [9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
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- [18] https://www.asylumlawdatabase.eu/node/19#toc_149
- [19] https://www.asylumlawdatabase.eu/node/19#toc_157
- [20] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-24511-k-v-bundesasylamt>
- [21] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-62010-migrationsverket-v-nurije-kastrati-valdrina-kastrati-valdrin-kastrati>
- [22] <https://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-application-no-3069609-resource>
- [23] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgment%20-%20C-394.12.pdf>