

3. Does Article 1(2)(d) of the Regulation [permit] the possibility of refusal of an application for a declaration of enforceability on the basis of the certificate issued by the court of origin, if it is apparent from the judgment in respect of which the certificate was issued that there is an arbitration clause?

(<sup>1</sup>) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

**Reference for a preliminary ruling from High Court of Justice Queen's Bench Division (Administrative Court) (United Kingdom) made on 23 September 2011 — Fruition Po Limited v Minister for Sustainable Farming and Food and Animal Health**

(Case C-500/11)

(2011/C 370/28)

*Language of the case: English*

**Referring court**

High Court of Justice Queen's Bench Division (Administrative Court)

**Parties to the main proceedings**

*Applicant:* Fruition Po Limited

*Defendant:* Minister for Sustainable Farming and Food and Animal Health

**Questions referred**

1. In circumstances where

(a) a Member State was considering recognition of a body as a producer organisation under Article 11 of Council Regulation 2200/96 (<sup>1</sup>);

(b) the body had aims and rules of association complying with the requirements of Article 11;

(c) producer members of the body received all the services required to be provided to them by a producer organisation under Article 11; and

(d) the body had engaged contractors to provide a substantial proportion of such services

was Article 11 to be interpreted, consistently with the principle of legal certainty, as requiring the body to have a degree of control over the contractors?

2. If the answer to question 1 is 'yes', what degree of control was Article 11 to be interpreted as requiring?

3. In particular, did the body have the degree of control, if any, required by Article 11 in circumstances

(a) where the contractors were:

1. a company 93 % of the shares in which were held by members of the body; and

2. a company 50 % of the shares in which were held by the first company and whose constitution provided that decisions taken by the company should be taken on the basis of unanimity;

(b) neither company was subject to a contractual obligation to comply with the body's instructions to them in relation to the activities in question; but

(c) as a consequence of the shareholding structure described above, the body and the contractors operated on the basis of consensus?

4. Is it relevant to the determination of the above questions that:

(a) Article 6(2) of Commission Regulation 1432/03 (<sup>2</sup>), laying down detailed rules for the application of Council Regulation 2200/96 regarding the conditions for recognition of producer organisations, expressly provided at the relevant time that 'Member States shall determine the conditions' on which producer organisations could entrust to third parties the performance of its tasks;

(b) the Member State referred to in question 1 had at the relevant time failed to determine such conditions?

(<sup>1</sup>) Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables OJ L 297, p. 1

(<sup>2</sup>) Commission Regulation (EC) No 1432/2003 of 11 August 2003 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 regarding the conditions for recognition of producer organisations and preliminary recognition of producer groups OJ L 203, p. 18

**Reference for a preliminary ruling from the Giudice di Pace di Lecce (Italy) lodged on 13 October 2011 — Criminal proceedings against Abdoul Khadre Mbaye**

(Case C-522/11)

(2011/C 370/29)

*Language of the case: Italian*

**Referring court**

Giudice di Pace di Lecce

**Party to the main proceedings**

Abdoul Khadre Mbaye

**Questions referred**

1. Does Article 2(2)(b) of Directive 2008/115/EC (<sup>1</sup>) preclude the possible application of that directive even when the national legislation (Article 10a of Legislative Decree 286/98) penalises an illegal entry or stay by expulsion as an alternative to criminal law sanctions?

2. Does the Community directive on the return of third-country nationals preclude criminal sanctions where a foreign national is merely unlawfully present on national territory, regardless of whether the administrative return procedure provided for by the national legislation and by the directive itself has been completed?

(<sup>1</sup>) OJ 2008 L 348, p. 98.

**Reference for a preliminary ruling from the Administrativen Sad Sofia (Bulgaria) lodged on 18 October 2011 — Zuheyr Freyeh Halaf v Darzhavna agentsia za bezhantsite pri Ministerski savet**

(Case C-528/11)

(2011/C 370/30)

*Language of the case: Bulgarian*

**Referring court**

Administrativen Sad Sofia

**Parties to the main proceedings**

*Applicant:* Zuheyr Freyeh Halaf

*Defendant:* Darzhavna agentsia za bezhantsite pri Ministerski savet

**Questions referred**

1. Is Article 3(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 to be interpreted as meaning that it permits a Member State to assume responsibility for examining an asylum application where no personal circumstances exist in relation to the asylum seeker which establish the applicability of the humanitarian clause in Article 15 of that regulation and where at least one of the following situations exists in relation to the Member State responsible pursuant to Article 3(1) of the regulation:
  - (a) Facts and conclusions therefrom are set out in documents of the Office of the United Nations High Commissioner for Refugees (UNHCR) to the effect that the legally responsible Member State is in breach of provisions of European Union law on asylum which relate to the reception conditions for asylum seekers, access to the procedure, or the quality of the procedure for examining asylum applications;
  - (b) The legally responsible Member State has not responded to a request to take back the applicant pursuant to Article 20(1) of Regulation No 343/2003, given that

that regulation does not contain any provisions concerning compliance with the principle of solidarity pursuant to Article 80 TFEU?

2. For the purposes of applying Article 3(2) of Regulation No 343/2003 is it possible for a national court of a Member State, before which the claim that that regulation is applicable is based on claims of an infringement of European Union law on asylum by the Member State responsible (under Article 3(1) of that regulation), to examine the infringement of that law and the consequent effects on the rights of the asylum seeker which are guaranteed to him by European Union law in the event of his transfer to the Member State responsible, where the Court of Justice of the European Union has not declared that that Member State has infringed the relevant provisions of European Union law, according to the procedure provided for by that law?

In the event that the above question is answered in the affirmative, the following questions on establishing the criteria for an infringement of European Union law might also be answered:

Are only substantial infringements of European Union law to be taken into account and which criteria must the national court consider in establishing such infringements in order to apply the provision of Regulation No 343/2003 of which an interpretation is sought?

Where an infringement of European Union law on asylum results in the infringement of a right of any kind guaranteed to the asylum seeker by European Union law, should it only on that basis be assessed as substantial or must there also be a restriction on the infringement of the right to asylum within the meaning of Article 18 of the Charter of Fundamental Rights of the European Union?

Where, according to the general criteria and standards of European Union law, there is no legal basis for accepting the asylum application of the person concerned, should then only the infringement of reception conditions for asylum seekers in the legally responsible Member State responsible be examined?

3. What is the content of the right to asylum under Article 18 of the Charter of Fundamental Rights of the European Union in conjunction with Article 53 of that Charter and in conjunction with the definition in Article 2(c) and recital 12 of Regulation No 343/2003?
4. Is Article 3(2) of Regulation No 343/2003 to be interpreted as meaning that it permits a national court of a Member State to find that the presumption that the Member State responsible pursuant to Article 3(1) of the regulation respects the principle of non refoulement and is a safe country within the meaning of recital 2 of the preamble to that regulation is rebutted, without any declaration to that effect by the Court of Justice of the European Union, where the following factors are to be taken into account: