



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

25 October 2017*

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national — Article 27 — Remedy — Scope of the judicial review — Article 29 — Time limit for carrying out the transfer — No transfer within the time limit laid down — Obligations of the Member State responsible — Transfer of responsibility — Requirement for a decision of the Member State responsible)

In Case C-201/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Upper Administrative Court, Austria), made by decision of 31 March 2016, received at the Court on 12 April 2016, in the proceedings

Majid Shiri, also known as Madzhdi Shiri,

joined party:

Bundesamt für Fremdenwesen und Asyl,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen (Rapporteur), T. von Danwitz, J.L. da Cruz Vilaça and A. Rosas, Presidents of Chambers, E. Juhász, A. Borg Barthet, M. Safjan, D. Šváby, A. Prechal, E. Jarašiūnas and M. Vilaras, Judges,

Advocate General: E. Sharpston,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 14 March 2017,

after considering the observations submitted on behalf of:

- Mr Shiri, by W. Weh and S. Harg, Rechtsanwälte,
- the Austrian Government, by G. Hesse, acting as Agent,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- the United Kingdom Government, by C. Crane and S. Brandon, acting as Agents, and D. Blundell and M. Gray, Barristers,

* Language of the case: German.

- the Swiss Government, by E. Bichet, acting as Agent,
 - the European Commission, by G. Wils and M. Condou-Durande, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 20 July 2017,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 27(1) and 29(1) and (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 (OJ 2013 L 180, p. 31; ‘the Dublin III Regulation’).
- 2 The request has been made in the context of examination of the appeal brought by Majid Shiri, also known as Madzhdi Shiri, an Iranian national, against the decision of the Bundesamt für Fremdenwesen und Asyl (Federal Office for Immigration and Asylum, Austria; ‘the Office’) declaring his application for international protection inadmissible, ordering his deportation and determining that his removal to Bulgaria is lawful.

Legal context

Regulation (EC) No 1560/2003

- 3 Chapter III of Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 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 222, p. 3), as amended by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 (OJ 2014 L 39, p. 1), sets out a series of rules relating to the carrying out of the transfer of the person concerned to the Member State responsible within the meaning of the Dublin III Regulation.
- 4 Article 8(1) of the regulation provides:

‘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. ...’

The Dublin III Regulation

- 5 Recitals 4, 5 and 19 of the Dublin III Regulation are worded as follows:

‘(4) The [conclusions of the European Council at its special meeting in Tampere on 15 and 16 October 1999] also stated that the [Common European Asylum 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.

(5) 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 granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

...

(19) 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.'

6 Article 3(1) of the Dublin III Regulation provides:

'Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. 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.'

7 The first subparagraph of Article 17(1) of the Dublin III Regulation states:

'By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.'

8 Articles 22 and 25 of the Dublin III Regulation lay down the rules relating, respectively, to replying to a take charge request and to replying to a take back request.

9 Article 27(1) and (3) of the Dublin III Regulation is worded as follows:

'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.

...

3. For the purposes of appeals against, or reviews of, transfer decisions, Member States shall provide in their national law that:

- (a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or
- (b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or
- (c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period

of time, while permitting a close and rigorous scrutiny of the suspension request. A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.’

10 Article 29(1) and (2) of the Dublin III Regulation provides:

‘1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting 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 by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

...

2. Where the transfer does not take place within the six months’ time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. 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 person concerned or up to a maximum of eighteen months if the person concerned absconds.’

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

- 11 Mr Shiri entered the territory of the Member States via Bulgaria and lodged an application for international protection in that Member State on 19 February 2015.
- 12 He then lodged an application for international protection in Austria on 7 March 2015. On 9 March 2015 the Office asked the Bulgarian authorities to take Mr Shiri back.
- 13 On 23 March 2015 the Bulgarian authorities agreed to that take back request.
- 14 On 2 July 2015 the Office declared that the application for international protection lodged by Mr Shiri was inadmissible, ordered his deportation and determined that his removal to Bulgaria was lawful.
- 15 Mr Shiri challenged that decision before the Bundesverwaltungsgericht (Federal Administrative Court, Austria), coupling that appeal with an application for the appeal to be accorded suspensive effect. Without ruling on that application, the court annulled the decision on 20 July 2015, on the ground that, on account of Mr Shiri’s vulnerability owing to his state of health, the Office should have examined whether it was obliged to exercise the power provided for in Article 17(1) of the Dublin III Regulation.
- 16 Following that annulment, by a fresh decision of 3 September 2015 the Office declared that the application for international protection lodged by Mr Shiri was inadmissible, ordered his deportation and determined that his removal to Bulgaria was lawful.
- 17 Mr Shiri challenged that decision before the Bundesverwaltungsgericht (Federal Administrative Court) by an appeal received by it on 17 September 2015, and coupled the appeal with an application for it to be accorded suspensive effect. By supplementary observations of 23 September 2015, Mr Shiri submitted that the Republic of Austria had become the Member State responsible for examining his application for international protection because the six-month period for a transfer, as defined in Article 29(1) and (2) of the Dublin III Regulation, had expired on that date.

- 18 The Bundesverwaltungsgericht (Federal Administrative Court) dismissed the appeal by judgment of 30 September 2015, without ruling on the application for the appeal to be accorded suspensive effect. As regards the argument set out by Mr Shiri in his supplementary observations of 23 September 2015, alleging that the six-month period as defined in Article 29(1) and (2) of the Dublin III Regulation had expired, it held that, following the annulment of the Office's decision of 2 July 2015 and the referral of the case back to the Office for a fresh decision, a fresh period of six months began to run from the time when it again became possible to transfer Mr Shiri, namely, from the seventh day following receipt of the appeal lodged by him, that is to say, from 24 September 2015. Therefore, the Bundesverwaltungsgericht (Federal Administrative Court) held that responsibility for examining the application for international protection lodged by Mr Shiri remained with the Republic of Bulgaria and had not in the meantime been transferred to the Republic of Austria.
- 19 Mr Shiri then brought an appeal on a point of law against that judgment before the referring court.
- 20 That court takes the view that, before ruling on whether the transfer period applicable to Mr Shiri may have expired, it should be established whether an applicant for international protection can invoke any transfer of responsibility for examining his application for protection because the transfer period has expired and whether its expiry is sufficient in itself to result in such a transfer of responsibility.
- 21 In those circumstances, the Verwaltungsgerichtshof (Upper Administrative Court, Austria) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '1. Are the provisions of [the Dublin III Regulation] that confer the right to an effective remedy against a transfer decision, in particular Article 27(1), to be interpreted as meaning that an applicant for asylum is entitled to claim that responsibility has been transferred to the requesting Member State on the ground that the six-month transfer period has expired (Article 29(2) in conjunction with Article 29(1) of [the Dublin III Regulation] in light of recital 19)?

If the answer to Question 1 is in the affirmative:

2. Does the transfer of responsibility under the first sentence of Article 29(2) of [the Dublin III Regulation] occur by the fact of the expiry of the transfer period without any order or, for responsibility to be transferred because the period has expired, is it also necessary that the obligation to take charge of, or to take back, the person concerned has been refused by the responsible Member State?'

The request that the oral procedure be reopened

- 22 After the Advocate General delivered her Opinion at the sitting on 20 July 2017, Mr Shiri, by letter received at the Court Registry on 6 September 2017, requested the Court to order the reopening of the oral part of the procedure. In support of that request, he contended that the Opinion addressed a question of law relating to the calculation of the period referred to in Article 29(1) of the Dublin III Regulation which had not been submitted to the Court by the referring court and on which he had therefore been unable to put forward his observations.
- 23 Article 83 of the Rules of Procedure of the Court of Justice permits the Court, after hearing the Advocate General, to order at any time the reopening of the oral part of the procedure, *inter alia* where the case must be decided on the basis of a legal argument which has not been debated between the parties.

- 24 In the present instance, the Court in any event considers that there is no need to take a view on the question of law to which Mr Shiri refers relating to the calculation of the period in Article 29(1) of the Dublin III Regulation. Moreover, the Court considers, after hearing the Advocate General, that it has all the information necessary to give judgment and that that information has been the subject of debate before it.
- 25 Accordingly, there is no need to order that the oral part of the procedure be reopened.

Consideration of the questions referred

Question 2

- 26 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 29(2) of the Dublin III Regulation must be interpreted as meaning that, where the transfer does not take place within the six-month time limit as defined in Article 29(1) and (2) of that regulation, responsibility is transferred automatically to the requesting Member State, without it being necessary for the Member State responsible to refuse to take charge of or take back the person concerned.
- 27 Under the first subparagraph of Article 29(1) of the Dublin III Regulation, the transfer of the person concerned is to be carried out as soon as practically possible, and at the latest within six months of acceptance by another Member State of the request to take charge of or to take back that person or of the final decision on an appeal or review where there is a suspensive effect.
- 28 In that last respect, it is apparent from Article 27(3)(c) of the Dublin III Regulation that, where national law provides that the person concerned has the opportunity to request a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his appeal or review, the court or tribunal seised must rule on that request within a reasonable period of time and, if its decision rejects the request, must state the reasons on which that decision is based.
- 29 Article 29(2) of the Dublin III Regulation states that, where the transfer does not take place within the six-month time limit, the Member State responsible is to be relieved of its obligations to take charge of or to take back the person concerned and responsibility is then to be transferred to the requesting Member State.
- 30 It is apparent from the very wording of Article 29(2) that it provides for an automatic transfer of responsibility to the requesting Member State, without making that transfer conditional on any reaction by the Member State responsible (see, by analogy, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 61).
- 31 That interpretation is, moreover, consistent with the objective, referred to in recital 5 of the Dublin III Regulation, of rapid processing of applications for international protection, in so far as the interpretation ensures, in the event of a delay in the take charge or take back procedure, that the examination of the application for international protection is carried out in the Member State where the applicant is, so as not to delay that examination further (see, by analogy, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 54).
- 32 That interpretation is also reflected by the rules relating to the carrying out of the transfer set out in Chapter III of Regulation No 1560/2003.

- 33 Whilst Article 8 of Regulation No 1560/2003 obliges the Member State responsible to allow the asylum seeker's transfer to take place as quickly as possible, no provision of that regulation confers on that Member State the power, after accepting, explicitly or implicitly, a take charge or take back request pursuant to Article 22 or 25 of the Dublin III Regulation, to express a fresh view on its willingness to take charge of or take back the person concerned.
- 34 In the light of the foregoing, the answer to the second question is that Article 29(2) of the Dublin III Regulation must be interpreted as meaning that, where the transfer does not take place within the six-month time limit as defined in Article 29(1) and (2) of that regulation, responsibility is transferred automatically to the requesting Member State, without it being necessary for the Member State responsible to refuse to take charge of or take back the person concerned.

Question 1

- 35 By its first question, the referring court asks, in essence, whether Article 27(1) of the Dublin III Regulation, read in the light of recital 19 thereof, must be interpreted as meaning that an applicant for international protection may rely, in an action brought against a decision to transfer him, on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation.
- 36 Article 27(1) of the Dublin III Regulation provides that an applicant for international protection is to 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.
- 37 The scope of the remedy available to an applicant for international protection against a decision to transfer him is explained in recital 19 of the Dublin III Regulation, which states that, in order to ensure compliance with international law, the effective remedy introduced by that regulation in respect of transfer decisions must cover (i) the examination of the application of that regulation and (ii) the examination of the legal and factual situation in the Member State to which the asylum seeker is to be transferred (judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 43).
- 38 Furthermore, it is apparent from the Court's case-law that, in the light, in particular, of the general thrust of the developments that have taken place, as a result of the adoption of the Dublin III Regulation, in the system for determining the Member State responsible for an asylum application made in one of the Member States, and of the objectives of that regulation, Article 27(1) of the regulation must be interpreted as meaning that the action for which it provides must be capable of relating, inter alia, to observance of the procedural safeguards laid down by the regulation (see, to that effect, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraphs 44 to 48 and the case-law cited).
- 39 The take charge and take back procedures established by the Dublin III Regulation must, in particular, be carried out in compliance with a series of mandatory time limits, which include the six-month time limit referred to in Article 29(1) and (2) of that regulation. Whilst those provisions are intended to provide a framework for those procedures, they also contribute, in the same way as the criteria set out in Chapter III of the regulation, to determining the Member State responsible. As is clear from paragraphs 30 to 34 of the present judgment, the expiry of that six-month period without the transfer of the applicant from the requesting Member State to the Member State responsible having been carried out results in the automatic transfer of responsibility from the second Member State to the first (see, by analogy, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraphs 50 to 53).

- 40 Accordingly, in order to ensure that the contested transfer decision has been adopted following a proper application of those procedures, the court or tribunal dealing with an action challenging a transfer decision must be able to examine the claims made by an applicant for international protection that that decision was adopted in breach of the provisions set out in Article 29(2) of the Dublin III Regulation in so far as the requesting Member State is said to have already become the Member State responsible on the day when that decision was adopted, on account of the prior expiry of the six-month period as defined in Article 29(1) and (2) of the regulation (see, by analogy, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 55).
- 41 That said, it is to be noted that, unlike the periods at issue in the case that gave rise to the judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587), which provide a framework for the making of a take charge request, the periods set out in Article 29 of the Dublin III Regulation are intended to provide a framework not only for the adoption but also for the implementation of the transfer decision.
- 42 It follows that those periods may expire after the transfer decision has been adopted. It should, moreover, be noted that, in the main proceedings, the person concerned contends that the six-month period as defined in Article 29(1) and (2) of the Dublin III Regulation expired on a date after that on which a transfer decision was adopted.
- 43 The competent authorities of the requesting Member State cannot, in such a situation, carry out the transfer of the person concerned to another Member State and are, on the contrary, required to take, on their own initiative, the measures necessary to acknowledge the responsibility of the first Member State and to initiate without delay the examination of the application for international protection lodged by that person.
- 44 Nonetheless, in the light, first, of the objective, referred to in recital 19 of the Dublin III Regulation, of guaranteeing, in accordance with Article 47 of the Charter of Fundamental Rights, effective protection of the persons concerned and, secondly, of the objective, noted in paragraph 31 of the present judgment, of determining rapidly the Member State responsible for processing an application for international protection, in the interests both of applicants for such protection and of the proper general functioning of the system established by that regulation, the applicant must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of the regulation that occurred after the transfer decision was adopted.
- 45 In the present instance, the right which Austrian legislation accords to an applicant for international protection to plead circumstances subsequent to the adoption of the decision to transfer him, in an action brought against that decision, meets that obligation to provide for an effective and rapid remedy.
- 46 It follows from the foregoing considerations that Article 27(1) of the Dublin III Regulation, read in the light of recital 19 thereof, and Article 47 of the Charter of Fundamental Rights must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation that occurred after the transfer decision was adopted. The right which national legislation such as that at issue in the main proceedings accords to such an applicant to plead circumstances subsequent to the adoption of that decision, in an action brought against it, meets that obligation to provide for an effective and rapid remedy.

Costs

⁴⁷ 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:

- 1. Article 29(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 as meaning that, where the transfer does not take place within the six-month time limit as defined in Article 29(1) and (2) of that regulation, responsibility is transferred automatically to the requesting Member State, without it being necessary for the Member State responsible to refuse to take charge of or take back the person concerned.**
- 2. Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation that occurred after the transfer decision was adopted. The right which national legislation such as that at issue in the main proceedings accords to such an applicant to plead circumstances subsequent to the adoption of that decision, in an action brought against it, meets that obligation to provide for an effective and rapid remedy.**

[Signatures]