



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

13 September 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 28 — Detention for the purposes of transfer of an applicant for international protection to the Member State responsible — Deadline for carrying out the transfer — Maximum period of detention — Calculation — Request to take charge accepted before the detention — Suspension of the implementation of the transfer decision)

In Case C-60/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kammarrätten i Stockholm — Migrationsöverdomstolen (Administrative Court of Appeal for Immigration Matters, Stockholm, Sweden), made by decision of 29 January 2016, received at the Court on 3 February 2016, in the proceedings

Mohammad Khir Amayry

v

Migrationsverket,

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan and D. Šváby, Judges,

Advocate General: Y. Bot,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 25 January 2017,

after considering the observations submitted on behalf of:

- Mr Khir Amayry, by S. Stoeva, advokat,
- the Migrationsverket, by F. Beijer and F. Axling, acting as Agents,
- the Swedish Government, by L. Swedenborg and by A. Falk, C. Meyer-Seitz, U. Persson and N. Otte Widgren, acting as Agents,
- the Belgian Government, by M. Jacobs and C. Pochet, acting as Agents,

* Language of the case: Swedish.

- the German Government, by T. Henze and R. Kanitz, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and B. Koopman, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the United Kingdom Government, by C. Crane and M. Holt, acting as Agents, assisted by D. Blundell, Barrister,
- the Swiss Government, by C. Bichet, acting as Agent,
- the European Commission, by M. Condou-Durande and K. Simonsson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 March 2017,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 28(3) 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 proceedings between Mohammad Khir Amayry and the Migrationsverket (Migration Board, Sweden; 'the Board') concerning the decision of the latter to hold Mr Khir Amayry in detention pending his transfer to Italy pursuant to the Dublin III Regulation.

Legal context

EU law

Directive 2013/33/EU

- 3 Article 8 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96; 'the Reception Directive') states:

'1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [OJ 2013 L 80, p. 60].

...

3. An applicant may be detained only:

...

- (f) in accordance with Article 28 of [the Dublin III Regulation].

...'

- 4 Article 9 of the Reception Directive, entitled 'Guarantees for detained applicants', states, in paragraph 1:

'An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.'

Dublin III Regulation

- 5 Recital 20 of the Dublin III Regulation is worded as follows:

'The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality. In particular, the detention of applicants must be in accordance with Article 31 of the [Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951]. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of [the Reception Directive] also to persons detained on the basis of this Regulation.'

- 6 Article 27(3) and (4) of that regulation states:

'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.

4. Member States may provide that the competent authorities may decide, acting *ex officio*, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.'

7 Article 28 of that regulation states:

‘1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.

2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where a person is detained pursuant to this Article, the period for submitting a take charge or take back request shall not exceed one month from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases. Such reply shall be given within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and shall entail the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within six weeks of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).

When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 21, 23, 24 and 29 shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of [the Reception Directive] shall apply.’

8 Article 29(1) and (2) of the same regulation is worded as follows:

‘1. The transfer of the applicant ... 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.’

Swedish law

- 9 Under Chapter 1, Paragraph 8, of the utlänningslag (Law on aliens, SFS 2005, No 716), the law is to be applied in such a way that an alien's freedom is not restricted more than is necessary in each individual case.
- 10 Chapter 1, Paragraph 9 of that law provides that the provisions thereof relating to deportation also apply *mutatis mutandis* to transfer decisions under the Dublin III Regulation.
- 11 Chapter 10, Paragraph 1 of the same law allows aliens aged 18 years or over to be detained with a view to preparing or implementing the execution of a decision on deportation.
- 12 Chapter 10, Paragraph 4 of the Law on aliens provides that an alien may not be detained for a period longer than two months unless there are serious reasons for a longer period and specifies that, if there are such reasons, the alien may not be detained for a period longer than three months. Where it is probable that implementation of a transfer decision will take longer due to a lack of cooperation by the alien or it takes time to obtain the necessary documents, detention may not last for a period longer than 12 months.

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

- 13 Mr Khir Amayry lodged an application for international protection in Sweden on 19 December 2014.
- 14 A check on the Eurodac system having brought to light the fact that Mr Khir Amayry had travelled to Italy on 6 December 2014 and that, on 17 December 2014, he had already applied for international protection in Denmark, the Board requested, on 15 January 2015, that the Italian authorities take charge of Mr Khir Amayry.
- 15 The Italian authorities accepted the request to take charge of Mr Khir Amayry on 18 March 2015.
- 16 On 2 April 2015, the Board dismissed Mr Khir Amayry's application for a residence permit, including his application for international protection, closed the case relating to the declaration of status and decided to transfer him to Italy. Furthermore, taking the view that there was a significant risk of his absconding, the Board decided to detain him.
- 17 Mr Khir Amayry appealed against those decisions to the Förvaltningsrätten i Stockholm — Migrationsdomstolen (Stockholm Administrative Court, ruling on immigration matters, Sweden). Following the lodging of that appeal, the Board decided to suspend the implementation of the transfer decision.
- 18 The Förvaltningsrätten i Stockholm — Migrationsdomstolen (Stockholm Administrative Court, ruling on immigration matters) dismissed that appeal on 29 April 2015, in particular finding that there was a risk that, if he were removed from detention, Mr Khir Amayry would abscond, evade the authorities or otherwise prevent the implementation of the transfer decision. He appealed against this judgment to the referring court.
- 19 On 8 May 2015, the transfer decision was put into effect. Subsequently, Mr Khir Amayry returned to Sweden where, on 1 June 2015, he made a fresh application for international protection.
- 20 On 30 July 2015 the referring court decided not to grant leave to appeal regarding the part of the judgment of the Förvaltningsrätten i Stockholm — Migrationsdomstolen (Stockholm Administrative Court, ruling on immigration matters) concerning the issue of the transfer, but granted leave to appeal concerning the detention.

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

- ‘(1) If an [applicant for international protection] is not in detention at the time when the Member State responsible agrees to take charge of him but is detained at a later date — on the ground that only then is the assessment made that there is a significant risk that the person will abscond — may the time limit of six weeks in Article 28(3) of the [Dublin III] Regulation ... be calculated in such a situation from the day on which the person is detained or is it to be calculated from another time and, if so, when?
- (2) Does Article 28 of the [Dublin III] Regulation preclude, in a situation where an [applicant for international protection] is not in detention at the time when the Member State responsible agrees to take charge of him, the application of national rules which, in Sweden, mean that an alien may not be kept in detention pending [transfer] for longer than 2 months, if there are no serious reasons for detaining him for a longer period, and if there are such serious reasons, the alien may be kept in detention for a maximum of 3 months or, if it is probable that [the transfer] will take longer due to a lack of cooperation from the alien or it takes time to obtain the necessary documents, a maximum of 12 months?
- (3) If [a transfer] procedure is recommenced when an appeal or a review no longer has suspensive effect (see Article 27(3) [of the Dublin III Regulation]), does a new period of six weeks for implementation of the transfer start to run or is there a deduction to be made, for example, of the number of days the person has already spent in detention after the Member State responsible agreed to take charge of him or take him back?
- (4) Is it of any importance whether the [applicant for international protection] who appealed against a transfer decision has not himself applied for the implementation of the transfer decision to be suspended pending the result of the appeal (see Article 27(3)(c) and (4) [of the Dublin III Regulation])?’

Consideration of the questions referred

The first and second questions

- 22 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 28 of the Dublin III Regulation must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that, where the detention of an applicant for international protection begins after the requested Member State has accepted the request to take charge, that detention may be maintained for no longer than 2 months in principle, no longer than 3 months if there are serious reasons for a longer period in detention and no longer than 12 months if it is probable that the transfer will take longer due to a lack of cooperation by the person concerned or if it takes time to obtain the necessary documents.
- 23 It is clear from Article 8(1) of the Reception Directive that a person may not be detained for the sole reason that he or she has applied for international protection.
- 24 However, Article 8(3)(f) of that directive allows an applicant for international protection to be detained in accordance with Article 28 of the Dublin III Regulation.

- 25 It follows from Article 28(1) and (2) of the Dublin III Regulation that, if Member States may not detain a person in order to secure transfer procedures for the sole reason that that person is subject to the procedure established by that regulation, the Member States may, however, under certain conditions, detain a person when there is a significant risk of that person absconding.
- 26 That power is, in particular, regulated by Article 28(3) of that regulation, which specifies, in its first subparagraph, that detention is to be for as short a period as possible and is to be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer is carried out.
- 27 In order to give specific expression to that principle, the second and third subparagraphs of Article 28(3) of the Dublin III Regulation lay down specific periods for submitting a take charge or take back request and for carrying out the transfer. It is also clear from the fourth subparagraph of Article 28(3) of that regulation that, when the requesting Member State fails to observe with those deadlines, the person is no longer to be detained.
- 28 With regard to the period for carrying out the transfer, the only factor which is relevant in a situation such as that at issue in the main proceedings, where the request to take charge has already been accepted before the person concerned was detained, is that the wording of the third subparagraph of Article 28(3) of that regulation does not, in itself, make it possible to determine whether that provision applies in all situations in which a person is detained pending his transfer or only when a person is already detained when one of the two events set out in that provision takes place, namely, first, when the request to take charge or take back is accepted and, second, when the suspensive effect of the appeal or review against a transfer decision ends.
- 29 That being said, it is clear from the settled case-law of the Court that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also its context and the objectives pursued by the rules of which it is part (judgment of 19 December 2013, *Koushkaki*, C-84/12, EU:C:2013:862, paragraph 34 and the case-law cited).
- 30 In that regard, it should be pointed out that the purpose of the procedures for taking charge and taking back established by the Dublin III Regulation is, in short, to enable the transfer of a third-country national to the Member State designated, in accordance with that regulation, as responsible for the examination of the application for international protection lodged by that third-country national.
- 31 In the context of those procedures, the power, under certain conditions, to detain the person concerned seeks, as specified by Article 28(2) of that regulation, to secure transfer procedures by avoiding that person absconding and thus preventing a possible transfer decision made in respect of him from being carried out.
- 32 In that context, the choice of a period of six weeks within which to carry out the transfer, such as that provided for by the third subparagraph of Article 28(3) of the Dublin III Regulation, shows that the EU legislature took the view that such a period could be necessary in order for the transfer of a detained person to be carried out.
- 33 In so far as none of the periods established by the third subparagraph of Article 28(3) of the Dublin III Regulation runs from the moment of detention, to consider that that provision applies in all situations in which a person is detained pending his transfer would imply that the detention must end six weeks after the acceptance of the take charge or take back request, even if the detention began only after that acceptance.
- 34 Accordingly, in such a situation, detention for the purposes of carrying out the transfer would necessarily have to be for a period of less than six weeks and any detention would be completely excluded once six weeks had elapsed following that acceptance.

- 35 In those circumstances, a Member State would have the power to begin the detention of the person concerned only during a small portion of the six week period granted to it under Article 29(1) and (2) of the Dublin III Regulation for the finalisation of the transfer, even if the risk of that person absconding, which could justify that detention, only becomes apparent at a later date.
- 36 Furthermore, whilst Article 29(2) of that regulation states that the transfer deadline is extended to no longer than 18 months if the person concerned absconds, a person who absconds for at least six weeks can no longer be detained in the situation where he would once again be available to the competent authorities.
- 37 In light of those considerations, it is apparent that the interpretation envisaged in paragraph 33 above, first, would be such as to appreciably limit the effectiveness of the procedures provided for by that regulation and, second, would risk encouraging the person concerned to abscond in order to prevent their transfer to the Member State responsible, thus barring the application of the principles and procedures of the same regulation (see, by analogy, judgments of 17 March 2016, *Mirza*, C-695/15 PPU, EU:C:2016:188, paragraph 52, and of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 37).
- 38 Moreover, that interpretation would be inconsistent with the wish of the EU legislature, expressed in recital 20 of the Dublin III Regulation, to allow detention while limiting its duration, since it would result in the limitation or cancellation of the detention, not on the basis of the time during which the person concerned was actually detained, but merely on the basis of the period of time elapsed since the requested Member State accepted the take charge or take back request.
- 39 The third subparagraph of Article 28(3) of the Dublin III Regulation must therefore be interpreted as meaning that the period no longer than six weeks within which the transfer of a detained person must be carried out, laid down by that provision, applies only in the situation where the person concerned is already detained when one of the two events covered by that provision takes place.
- 40 Consequently, when the detention of the person concerned pending his transfer begins after the requested Member State has accepted the take charge or take back request, the duration of the detention is circumscribed by one of the specific deadlines set out in Article 28(3) of that regulation, where appropriate, only from the date on which the appeal or review loses its suspensive effect in accordance with Article 27(3) of that regulation.
- 41 Failing any maximum duration of detention being set out in the Dublin III Regulation, such detention must nonetheless be compatible with, first of all, the principle laid down by the first subparagraph of Article 28(3) of that regulation that the detention be for as short a period as possible and not for longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer is carried out.
- 42 Next, the competent authority must, in accordance with Article 28(4) of that regulation, comply with the provisions of the Reception Directive which regulate the detention of applicants for international protection, in particular Article 9(1) of that directive, under which, in particular, the administrative procedures relevant to the grounds for detention are to be executed with due diligence.
- 43 Lastly, that authority must take account of Article 6 of the Charter of Fundamental Rights of the European Union, in so far as Article 28(2) of the Dublin III Regulation provides for a limitation on the exercise of the fundamental rights to liberty and security (see, to that effect, judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 49, and of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 36).

- 44 In that context, it is therefore incumbent upon the competent authority, under the supervision of national courts, to carry out diligently the transfer procedure and not to extend the detention for a period of time beyond what is necessary for the purposes of that procedure, assessed by taking account of the specific requirements of that procedure in each specific case (see, by analogy, judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraphs 58 and 59).
- 45 Furthermore, the person concerned may not be detained for a period vastly in excess of six weeks during which the transfer could be reasonably carried out, in so far as it follows from the third subparagraph of Article 28(3) of the Dublin III Regulation that that period is, in principle, sufficient as regards, in particular, the simplified nature of the transfer procedure between the Member States established by that regulation so that the competent authorities proceed with the transfer (see, by analogy, judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 60).
- 46 Consequently, given that the fact that the detention of an applicant for international protection begins after the requested Member State has accepted the take charge request is not such as to render the transfer of that applicant particularly difficult, detention of 3 or 12 months during which the transfer may be reasonably carried out exceeds the period of time which is reasonably necessary for the required administrative procedures with due diligence until the transfer is carried out to be satisfied.
- 47 By contrast, in such a situation, as regards the discretion enjoyed by the Member States in the adoption of measures seeking to implement EU legislation, a period of detention of two months would not be found to be necessarily excessive, its suitability in relation to the facts of each specific case having nevertheless to be assessed by the competent authority under the supervision of national courts.
- 48 However, in the situation where, after the detention has begun, the review or the appeal loses its suspensive effect in accordance with Article 27(3) of the Dublin III Regulation, that detention may not, pursuant to the third and fourth subparagraphs of Article 28(3) of that regulation, be maintained for more than six weeks from that date.
- 49 It follows from the foregoing that Article 28 of the Dublin III Regulation, read in the light of Article 6 of the Charter of Fundamental Rights, must be interpreted as meaning that:
- it does not preclude national legislation, such as that at issue in the main proceedings, which provides that, where the detention of an applicant for international protection begins after the requested Member State has accepted the take charge request, that detention may be maintained for no longer than two months, provided, first, that the duration of the detention does not go beyond the period of time which is necessary for the purposes of that transfer procedure, assessed by taking account of the specific requirements of that procedure in each specific case and, second, that, where applicable, that duration is not to be longer than six weeks from the date when the appeal or review ceases to have suspensive effect; and
 - it does preclude national legislation, such as that at issue in the main proceedings, which allows, in such a situation, the detention to be maintained for 3 or 12 months during which the transfer could be reasonably carried out.

The third question

- 50 By its third question, the referring court asks, in essence, whether Article 28(3) of the Dublin III Regulation must be interpreted as meaning that it is necessary to deduct from the six week period established by that provision, from the moment when the appeal or review no longer has suspensive effect, the number of days during which the person concerned was already detained after a Member State has accepted the take charge or take back request.

- 51 It should be recalled that the third subparagraph of Article 28(3) of the Dublin III Regulation states that, when a person is detained pursuant to Article 28 of that regulation, the transfer is to be carried out as soon as practically possible, and at the latest within six weeks of the acceptance by another Member State of the take charge or take back request or from the moment when the appeal or review no longer has suspensive effect in accordance with Article 27(3) of that regulation.
- 52 It thus follows from the wording of Article 28 of that regulation that the latter establishes two distinctive periods of six weeks, without indicating whether they are to be taken together or whether the duration of the second period should be reduced in certain situations.
- 53 That interpretation is supported by the function assigned to those deadlines by the EU legislature.
- 54 Although the deadlines set out in the third subparagraph of Article 28(3) of the Dublin III Regulation have the effect, pursuant to the fourth subparagraph of Article 28(3) of that regulation, of limiting the maximum duration of detention, the fact nonetheless remains that they are intended to determine the period during which the transfer must be carried out and that they thus substitute, in certain circumstances, for the normal deadlines established for that purpose by Article 29(1) of that regulation.
- 55 As long as an appeal or review lodged against a transfer decision has suspensive effect, it is, by definition, impossible to carry out the transfer, hence the deadlines set out for that purpose can, in that case, begin only when the future implementation of the transfer is in principle agreed upon and only the details of the transfer remain to be determined, namely from the date on which that suspensive effect is lifted (see, by analogy, judgment of 29 January 2009, *Petrosian*, C-19/08, EU:C:2009:41, paragraph 45).
- 56 In such a situation, each of the two Member States is confronted with the same practical difficulties in organising the transfer as those that it would have had to confront if the transfer had been carried out immediately following the acceptance of the take charge or take back request and should thus have the same six week period in which to determine the practical details of the transfer and carry out that transfer (see, by analogy, judgment of 29 January 2009, *Petrosian*, C-19/08, EU:C:2009:41, paragraphs 43 and 44).
- 57 The fact that the person concerned was already detained on the date on which the suspensive effect of the review or appeal was lifted is not, in itself, such as to substantially facilitate the transfer since the Member States concerned cannot regulate the practical details of the transfer when neither its subject nor, a fortiori, its date is settled.
- 58 Furthermore, in the situation where the person concerned had lodged an appeal or a review only after several weeks in detention, a possible reduction of the second period established by the third paragraph of Article 28(3) of the Dublin III Regulation equal to the number of days during which that person was already in detention could, in practice, deprive the competent authority of any possibility of carrying out the transfer before the detention ends and also prevent it making effective use of the power laid down by the EU legislature to hold the person concerned in detention in order to counter the significant risk of that person absconding.
- 59 Consequently, the answer to the third question is that Article 28(3) of the Dublin III Regulation must be interpreted as meaning that the number of days during which the person concerned was already detained after a Member State has accepted the take charge or take back request need not be deducted from the six week period established by that provision, from the moment when the appeal or review no longer has suspensive effect.

The fourth question

- 60 By its fourth question, the referring court asks, in essence, whether Article 28(3) of the Dublin III Regulation must be interpreted as meaning that the six week period beginning from the moment when the appeal or review no longer has suspensive effect, established by that provision, also applies when the suspension of the execution of transfer decision was not specifically requested by the person concerned.
- 61 It is clear from the third subparagraph of Article 28(3) of the Dublin III Regulation that the second deadline for carrying out the transfer, established by that provision, runs from the moment when the appeal or review no longer has suspensive effect in accordance with Article 27(3) of that regulation.
- 62 As noted in paragraph 55 above, that rule is designed to give the competent authority sufficient time to carry out the transfer of a detained person, taking account of the fact that, when an appeal or a review brought against a transfer decision has suspensive effect, it is possible to proceed with the transfer only once that suspensive effect has been lifted.
- 63 It must therefore be stressed that the fact that an appeal or review is recognised as having suspensive effect is, in that regard, decisive, in so far as it would prevent the transfer, without the intervention or lack of intervention of a prior request for the suspension of the transfer decision by the person concerned playing a decisive role.
- 64 It must moreover be noted that the EU legislature refers to the lifting of the suspensive effect ‘in accordance with Article 27(3)’ of the Dublin III Regulation, without drawing a distinction between the Member States which have decided to give an appeal or a review an automatic suspensive effect pursuant to Article 27(3)(a) and (b) of that regulation and the Member States which have chosen to make the grant of that suspensive effect subject to the intervention of a judicial decision to that effect on the request of the person concerned within the meaning of Article 27(3)(c) of that regulation.
- 65 In this respect, it should be recalled that the EU legislature did not intend the judicial protection enjoyed by applicants for international protection to be sacrificed to the requirement of expedition in processing applications for international protection (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 57).
- 66 It follows that Member States wishing to strengthen the judicial protection of applicants by giving automatic suspensive effect to an appeal or a review brought against a transfer decision may not, for the sake of meeting the requirement of expedition, be placed in a less favourable situation than those Member States which did not deem it necessary to do so. Such would be the case if the former Member States did not have a sufficient period in which to carry out the transfer when the person concerned is detained and that person has decided to lodge an appeal (see, by analogy, judgment of 29 January 2009, *Petrosian*, C-19/08, EU:C:2009:41, paragraphs 49 and 50).
- 67 Admittedly, Article 28(3) of the Dublin III Regulation does not directly make reference to the situation provided for by Article 27(4) of that regulation in which the suspension of the execution of a transfer does not follow from the effects of legislation or a judicial decision but from a decision taken by the competent authority.
- 68 However, in such a case, the person concerned finds himself in a situation in every respect comparable to that of a person whose appeal or review is recognised as having suspensive effect pursuant to Article 27(3) of that regulation.
- 69 In those circumstances, it appears, first, that the detention may also remain necessary in that situation pending the lodging of an appeal or a review and, second, that extending that detention for more than six weeks after the intervention of a final decision on appeal or review would not be justified.

- 70 Furthermore, owing to the similarity of the terms used in the third subparagraph of Article 28(3) and the first subparagraph of Article 29(1) of the Dublin III Regulation and owing to the fact that the purpose of both those provisions is to determine the period during which the transfer must be carried out, a more restrictive interpretation should normally be applied to each of those provisions, in which only the suspensive effect stemming from Article 27(3) of that regulation is referred to.
- 71 Consequently, such an interpretation would mean, pursuant to Article 29(1) of the Dublin III Regulation, that, when the competent authority makes use of the power laid down in Article 27(4) of the same regulation for the benefit of a person who has not been detained, the deadline for carrying out the transfer should also be calculated from the moment of acceptance by another Member State of the take charge or take back request. That interpretation would therefore, in practice, be such as to greatly deprive that provision of its utility, since it could not be used without the risk of preventing the transfer being carried out within the time limits laid down by the Dublin III Regulation.
- 72 Nor, it is also important to note, can that interpretation be preferred on the grounds that it would contribute to further protecting the freedom and security of the person concerned. The opposite interpretation does not lead to expanding the possibilities for maintaining the detention but rather to ensuring the application of a precise limit to the maximum period of detention in all cases in which that detention has been extended owing to the suspensive nature of the appeal or review.
- 73 In light of the foregoing, the answer to the fourth question is that Article 28(3) of the Dublin III Regulation must be interpreted as meaning that the six week period beginning from the moment when the appeal or review no longer has suspensive effect, established by that provision, also applies when the suspension of the execution of the transfer decision was not specifically requested by the person concerned.

Costs

- 74 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 (Third Chamber) hereby rules:

- 1. Article 28 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, read in conjunction with Article 6 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that:**
 - **it does not preclude national legislation, such as that at issue in the main proceedings, which provides that, where the detention of an applicant for international protection begins after the requested Member State has accepted the take charge request, that detention may be maintained for no longer than two months, provided, first, that the duration of the detention does not go beyond the period of time which is necessary for the purposes of that transfer procedure, assessed by taking account of the specific requirements of that procedure in each specific case and, second, that, where applicable, that duration is not to be longer than six weeks from the date when the appeal or review ceases to have suspensive effect; and**

- it does preclude national legislation, such as that at issue in the main proceedings, which allows, in such a situation, the detention to be maintained for 3 or 12 months during which the transfer could be reasonably carried out.
- 2. Article 28(3) of the Dublin III Regulation must be interpreted as meaning that the number of days during which the person concerned was already detained after a Member State has accepted the take charge or take back request need not be deducted from the six week period established by that provision, from the moment when the appeal or review no longer has suspensive effect.
- 3. Article 28(3) of the Dublin III Regulation must be interpreted as meaning that the six week period beginning from the moment when the appeal or review no longer has suspensive effect, established by that provision, also applies when the suspension of the execution of the transfer decision was not specifically requested by the person concerned.

[Signatures]