Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

2 April 2019*

(Reference for a preliminary ruling — Determination of the Member State responsible for examining an application for international protection — Regulation (EU) No 604/2013 — Article 18(1)(b) to (d) — Article 23(1) — Article 24(1) — Take back procedure — Criteria for determining responsibility — New application lodged in another Member State — Article 20(5) — Ongoing determination process — Withdrawal of the application — Article 27 — Remedies)

In Joined Cases C-582/17 and C-583/17,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decisions of 27 September 2017, received at the Court on 4 October 2017, in the proceedings

Staatssecretaris van Veiligheid en Justitie

v

H. (C-582/17),

R. (C-583/17),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal, M. Vilaras, E. Regan, C. Toader and C. Lycourgos, Presidents of Chambers, A. Rosas, M. Ilešič, L. Bay Larsen (Rapporteur), M. Safjan, D. Šváby, C.G. Fernlund and C. Vajda, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 4 September 2018,

after considering the observations submitted on behalf of:

– H., by I.M. Zuidhoek, advocaat,

– R., by P. Ufkes, advocaat,

– the Netherlands Government, by K. Bulterman and H.S. Gijzen, acting as Agents,

– the German Government, by T. Henze and R. Kanitz, acting as Agents,

* Language of the case: Dutch.

– the Finnish Government, by J. Heliskoski, acting as Agent,

– the United Kingdom Government, by S. Brandon and by Z. Lavery and R. Fadoju, acting as Agents, and by D. Blundell, Barrister,

– 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 29 November 2018,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation 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 requests for a preliminary ruling have been made in disputes between the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) ('the State Secretary') and H. and R., Syrian nationals, regarding the refusal to examine their applications for international protection.

Legal context

Regulation No 1560/2003

3 Annexes I and III to 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) ('Regulation No 1560/2003'), contain a 'standard form for determining the Member State responsible for examining an application for international protection' and a 'standard form for request[s] for taking back', respectively.

The Dublin III Regulation

4 Recitals 4, 5, 13, 14 and 19 of the Dublin III Regulation are worded as follows:

'(4) The Tampere conclusions … stated that the [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.

…

(13) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.

(14) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for family life should be a primary consideration of Member States when applying this Regulation.

…

(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.'

5 Article 2 of the Regulation provides:

'For the purposes of this Regulation:

…

(d) "examination of an application for international protection" means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities 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 180, p. 60),] and Directive 2011/95/EU [of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9)], except for procedures for determining the Member State responsible in accordance with this Regulation;

…'

6 Article 3(1) and (2) of the Regulation states:

'1. 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.

2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

…'

7 Appearing in Chapter III of the Dublin III Regulation, relating to the '[c]riteria for determining the Member State responsible', Article 9 of the Regulation, entitled 'Family members who are beneficiaries of international protection', is worded as follows:

'Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.'

8 Article 18 of the Regulation states:

'1. The Member State responsible under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 21, 22 and 29, of an applicant who has lodged an application in a different Member State;

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

(c) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;

(d) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person whose application has been rejected and who made an application in another Member State or who is on the territory of another Member State without a residence document.

2. In the cases falling within the scope of paragraph 1(a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection made by the applicant.

In the cases falling within the scope of paragraph 1(c), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection …

In the cases falling within the scope of paragraph 1(d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had the opportunity to seek an effective remedy pursuant to Article 46 of Directive 2013/32/EU.'

9 Chapter VI of that regulation, entitled 'Procedures for taking charge and taking back', comprises Articles 20 to 33 of the Regulation.

10 The first subparagraph of Article 20(5) of the Dublin III Regulation provides:

'An applicant who is present in another Member State without a residence document or who there lodges an application for international protection after withdrawing his or her first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 23, 24, 25 and 29, by the Member State with which that application for international protection was first lodged, with a view to completing the process of determining the Member State responsible.'

11 The first subparagraph of Article 21(1) of the Regulation is worded as follows:

'Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant.'

12 Article 22(2),(4),(5) and (7) of the Regulation provides:

'2. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

…

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

…

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

13 Article 23 of the Regulation provides:

'1. Where a Member State with which a person as referred to in Article 18(1)(b), (c) or (d) has lodged a new application for international protection considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

…

4. A take back request shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the statements of the person concerned, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).'

14 Article 24 of the Dublin III Regulation states:

'1. Where a Member State on whose territory a person as referred to in Article 18(1)(b), (c) or (d) is staying without a residence document and with which no new application for international protection has been lodged considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

…

5. The request for the person referred to in Article 18(1)(b), (c) or (d) to be taken back shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the person's statements, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

…'

15 Article 25 of the Regulation provides:

'1. The requested Member State shall make the necessary checks and shall give a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks.

2. Failure to act within the one month period or the two weeks period mentioned in paragraph 1 shall be tantamount to accepting the request, and shall entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.'

16 Article 27(1) of the Regulation provides:

'The applicant or another person as referred to in Article 18(1)(c) or (d) 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.'

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

Case C-582/17

17 On 21 January 2016, H. lodged an application for international protection in the Netherlands.

18 Taking the view that H. had previously lodged an application for international protection in Germany, on 21 March 2016 the State Secretary submitted to the German authorities a take back request pursuant to Article 18(1)(b) of the Dublin III Regulation.

19 The German authorities failed to reply to that take back request within the period prescribed of two weeks.

20 By decision of 6 May 2016, the State Secretary decided not to examine the application for international protection lodged by H., taking the view that H. was not entitled to rely on Article 9 of the Dublin III Regulation in order to establish the responsibility of the Kingdom of the Netherlands on account of her husband's presence in that Member State, since a take back situation rather than a take charge situation was at issue.

21 H. brought an action against that decision before the Rechtbank Den Haag, zittingsplaats Groningen (District Court, The Hague, sitting at Groningen, Netherlands).

22 By judgment of 6 June 2016, that court upheld the action and annulled the decision of the State Secretary, taking the view that it was insufficiently reasoned.

23 H. and the State Secretary appealed against that judgment.

24 The referring court considers that, in accordance with the logic underpinning the Dublin III Regulation, only the Member State in which the first application for international protection was lodged is to determine the Member State responsible. It infers from this that H. is not entitled to rely on a criterion set out in Chapter III of that regulation in the Netherlands, since she had not waited until the end of the procedure for determining the Member State responsible in Germany and that a take back agreement already exists between those two Member States.

25 Nevertheless, that court is uncertain whether such an approach is compatible with the approach adopted in the judgments of 7 June 2016, *Ghezelbash* (C-63/15, EU:C:2016:409), and of 7 June 2016, *Karim* (C-155/15, EU:C:2016:410).

26 In those circumstances, the Raad van State (Council of State, Netherlands) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must [the Dublin III Regulation] be interpreted as meaning that only the Member State in which the application for international protection was first lodged can determine the Member State responsible, with the result that a foreign national has a legal remedy only in that Member State, under Article 27 of [that regulation], against the incorrect application of one of the criteria for determining responsibility set out in Chapter III of [the Dublin Regulation], including Article 9?'

Case C-583/17

27 On 9 March 2016, R lodged an application for international protection in the Netherlands.

28 Taking the view that R. had previously lodged an application for international protection in Germany, the State Secretary requested the German authorities to take her back pursuant to Article 18(1)(b) of the Dublin III Regulation.

29 The German authorities initially rejected that application on the grounds that Ms R. was married to a person who was a beneficiary of international protection in the Netherlands.

30 The Staatssecretaris then sent the German authorities a request to reconsider in which it was specified that R.'s marriage to that person was not deemed plausible. On the basis of that application, the German authorities reconsidered their position and agreed, by a decision of 1 June 2016, to take back R.

31 By decision of 14 July 2016, the State Secretary decided not to examine the application for international protection lodged by R., taking the view (i) that R.'s alleged husband could not be regarded as a member of her family, given that R's alleged marriage had been shown to be implausible, and (ii) that R. was not entitled to rely on Article 9 of the Dublin III Regulation, since a take back situation rather than a take charge situation was at issue.

32 R. brought an action against that decision before the Rechtbank Den Haag zittingsplaats 's-Hertogenbosch (District Court, The Hague, sitting at 's-Hertogenbosch, Netherlands).

33 By judgment of 11 August 2016, that court upheld the action and annulled the decision of the State Secretary, on the ground that a third-country national was entitled to rely on the criteria set out in Chapter III of the Dublin III Regulation in both a take charge situation and a take back situation.

34 The State Secretary appealed against that judgement before the referring court.

35 In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must [the Dublin III Regulation] be interpreted as meaning that only the Member State in which the application for international protection was first lodged can determine the Member State responsible, with the result that a foreign national has a legal remedy only in that Member State, under Article 27 of [that regulation], against the incorrect application of one of the criteria for determining responsibility set out in Chapter III of [the Dublin Regulation], including Article 9?

(2) In answering Question 1, to what extent is it significant that, in the Member State in which the application for international protection was first lodged, a decision on that application had already been made or, alternatively, that the foreign national had withdrawn that application prematurely?'

36 By decision of the President of the Court of 19 October 2017, Cases C-582/17 and C-583/17 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred

37 By its question in Case C-582/17 and its questions in Case C-583/17, which it is appropriate to examine together, the referring court asks, in essence, whether the Dublin III Regulation must be interpreted as meaning that a third-country national who lodged an application for international protection in a first Member State, then left that Member State and subsequently lodged a new application for international protection in a second Member State, is entitled to rely, in an action brought under Article 27(1) of the Regulation in that second Member State against a decision to transfer him, on the criterion for determining responsibility set out in Article 9 thereof.

The scope of the right to the remedy

38 Article 27(1) of the Dublin III Regulation provides that a person who is the subject of a transfer decision is to have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against that decision, before a court or tribunal.

39 The scope of that remedy 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 the regulation

and (ii) the examination of the legal and factual situation in the Member State to which the applicant is to be transferred (judgments of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 43, and of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 37).

40 In that context, 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) thereof must be interpreted as meaning that the remedy for which it provides against a transfer decision must be capable of relating both to observance of the rules attributing responsibility for examining an application for international protection and to the procedural safeguards laid down by that regulation (see, to that effect, judgments of 26 July 2017, *A.S.*, C-490/16, EU:C:2017:585, paragraphs 27 and 31; of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraphs 44 to 48, and of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 38).

41 The fact that the transfer decision against which the remedy was exercised was adopted at the end of a take charge or take back procedure is not capable of influencing the scope that that remedy is thus recognised as having.

42 Article 27(1) of the Dublin III Regulation guarantees a right to a remedy both to applicants for international protection, who may be the subject, as applicable, of a take charge or take back procedure, and to the other persons referred to in Article 18(1)(c) or (d) thereof, who may be the subject of a take back procedure, without making any distinction as to the scope of the remedy open to those different categories of applicants.

43 However, that finding does not imply that a person concerned may rely, in the national court before which such a remedy has been invoked, on the provisions of that regulation which, in so far as they are not applicable to his situation, did not bind the competent authorities when conducting the take charge or take back procedure and adopting the transfer decision.

44 In this case, it is apparent from the orders for reference that the questions referred arise specifically from the doubts of the referring court on whether, in the situations at issue in the main proceedings, Article 9 of the Regulation is applicable and, therefore, whether the competent Netherlands authorities are obliged to take account, in the context of a take back procedure, of the criterion for determining responsibility set out in that article.

45 In order to reply to those questions, it is therefore appropriate to determine whether the competent authorities are required, in situations such as those at issue in the main proceedings, to determine the Member State responsible for examining the application by taking into consideration that criterion before they can properly make a take back request.

The procedure applicable in situations such as those at issue in the main proceedings

46 The scope of the take back procedure is defined in Articles 23 and 24 of the Dublin III Regulation. It follows from Article 23(1) and Article 24(1) of that regulation that the take back procedure is applicable to the persons referred to in Article 20(5) or in Article 18(1)(b) to (d) of that regulation.

47 Article 20(5) of that regulation provides inter alia that it applies to an applicant who lodges an application for international protection in a Member State after withdrawing his or her first application made in a different Member State during the process of determining the Member State responsible for examining the application.

48 That provision thus implies that an applicant who has given formal notice to the competent authority of the Member State in which he or she had lodged his or her first application of his wish to abandon that application before that process is completed could nevertheless be transferred to that first Member State in order for that process to be completed.

49 A transfer for this purpose to that first Member State should, a fortiori, be possible in a situation in which an applicant has left that Member State, before the process of determining the Member State responsible for examining the application has been completed, without informing the competent authority of that first Member State of his or her wish to abandon the application and in which, consequently, that process is still ongoing in that Member State.

50 Accordingly, it must be held, as the Finnish Government and the Commission contended at the hearing, that Article 20(5) of the Dublin III Regulation is also applicable in such a situation, since an applicant's departure from the territory of a Member State in which he or she lodged an application for international protection should be treated in the same way, for the purposes of applying that provision, as an implicit withdrawal of that application.

51 As regards Article 18(1)(b) to (d) of the Dublin III Regulation, it refers to a person who, first, has lodged an application for international protection, which is under examination, has withdrawn such an application while it is under examination or whose application has been rejected and who, second, has either made an application in another Member State or is staying on the territory of another Member State without a residence document (judgment of 25 January 2018, *Hasan*, C-360/16, EU:C:2018:35, paragraph 44).

52 Since it is apparent from Article 2(d) of the Regulation that the examination of an application for international protection covers any examination carried out by the competent authorities of an application for international protection, except for the procedure for determining the Member State responsible in accordance with the Regulation, it must be held that Article 18(1)(b) to (d) thereof can apply only if the Member State in which an application was previously lodged has completed that procedure for determining responsibility by accepting that it is responsible for examining that application and has started to examine that application in accordance with Directive 2013/32.

53 It follows from the foregoing that situations such as those at issue in the main proceedings fall within the scope of the take back procedure, irrespective of whether the application for international protection lodged in the first Member State has been withdrawn or whether the examination of that application in accordance with Directive 2013/32 has already started in that Member State.

The scheme applicable to take back procedures

54 The take charge and take back procedures must necessarily be carried out in accordance with the rules laid down in Chapter VI of the Dublin III Regulation (see, to that effect, judgments of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 49, and of 13 November 2018, *X and X*, C-47/17 and C-48/17, EU:C:2018:900, paragraph 57), which make those procedures subject to distinct schemes, which are set out in Sections II and III of that Chapter, respectively.

55 In the framework of the take charge procedure, Article 21(1) of that regulation provides that it is possible for the Member State with which an application for international protection has been lodged to request another Member State to take charge of an applicant only if the first Member State considers that the second is the Member State 'responsible for examining the application', the latter in principle being the Member State indicated by the criteria set out in Chapter III of that regulation.

56 The applicability of those criteria in the framework of the take charge procedure is confirmed by the provisions of Article 22(2) to (5) of that regulation, which regulate, in detail, the examination of the elements of proof and circumstantial evidence enabling those criteria to be applied and which set out the standard of proof required to establish that the requested Member State is responsible.

57 It follows from those factors that, in the framework of the take charge procedure, the process of determining the Member State responsible for examining the application on the basis of the criteria set out in Chapter III of the Dublin III Regulation is of crucial importance and that the competent authority of the Member State with which an application has been lodged may send another Member State a request for charge to be taken of the applicant only where that authority considers that that other Member State is responsible for examining that application (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 43).

58 However, the same is not true of the take back procedure, since that procedure is governed by provisions differing substantially, in that regard, from the provisions governing the take charge procedure.

59 Thus, in the first place, Article 23(1) and Article 24(1) of the Dublin III Regulation provide for the option of submitting a take back request when the requesting Member State considers that another Member State is 'responsible in accordance with Article 20(5) and Article 18(1)[(b) to (d)]' of that regulation, and not when it considers that another Member State is 'responsible for examining [the] application'.

60 It follows, as the Commission observed at the hearing, that the term 'responsible' is used in Article 23(1) and in Article 24(1) of the Dublin III Regulation differently from the manner in which it is used in Article 21(1) of the Regulation, in so far as it does not relate specifically to the responsibility to examine the application for international protection. Indeed, it is apparent from Article 18(2) and Article 20(5) of the Regulation that the purpose of the transfer of a person to the Member State bound by an obligation to take back is not necessarily to complete the examination of that application.

61 Thus, in accordance with Article 23(1) and Article 24(1) of the Dublin III Regulation, the exercise of the option to submit a take back request presupposes not that the responsibility of the requested Member State to examine the application for international protection is established, but that that Member State satisfies the conditions laid down in Article 20(5) or Article 18(1)(b) to (d) of the Regulation.

62 It is clear from the very wording of Article 20(5) of the Regulation that the obligation to take back that it establishes is imposed on 'the Member State with which that application for international protection was first lodged'. Accordingly, the criteria for determining responsibility set out in Chapter III of the Regulation cannot serve to identify that Member State.

63 Moreover, to make implementation of the obligation to take back conditional on the completion, in the requesting Member State, of the process of determining the Member State responsible for examining the application, for the purpose of verifying that that responsibility lies with the Member State referred to in Article 20(5) of the Regulation, would run counter to the very logic of that provision, since the latter specifies that the purpose of the taking back of the applicant imposed on that Member State is to enable the latter 'to complet[e] the process of determining the Member State responsible'.

64 The Court has moreover already held that that provision sets out specific obligations on the first Member State with which an application for protection has been lodged, that Member State thus being granted a special status by the Dublin III Regulation (see, to that effect, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraphs 93 and 95).

65 As regards Article 18(1)(b) to (d) of that regulation, it is indeed apparent from its wording that the obligations that it sets out are imposed on 'the Member State responsible'.

66 Nonetheless, as was found in paragraphs 52 and 53 of this judgment, the obligations to take back laid down in those provisions are applicable only if the process of determining the Member State responsible for examining the application set out by the Regulation has previously been completed in the requested Member State and it resulted in that State's acknowledging that it was responsible for examining that application.

67 In such a situation, since responsibility for examining the application has already been established, it is no longer necessary to re-apply the rules governing the process of determining that responsibility, foremost among which are the criteria set out in Chapter III of the Regulation.

68 Article 25 of the Dublin III Regulation bears out, in the second place, the lack of relevance of the criteria for determining responsibility set out in Chapter III thereof in the framework of the take back procedure.

69 While Article 22(2) to (5) of the Dublin III Regulation sets out in detail how those criteria must be applied in the framework of the take charge procedure, it must be stated that Article 25 thereof contains no similar provision and merely requires the requested Member State to make the necessary checks in order to give a decision on the take back request.

70 The simplified nature of the take back procedure is moreover borne out by the fact that the time limit laid down in Article 25(2) of the Regulation to act upon a take back request is significantly shorter than the time limit laid down in Article 22(7) thereof to act upon a take charge request.

71 In the third place, the foregoing interpretation is supported by the standard forms for take charge and take back requests set out in Annex I and Annex III to Regulation No 1560/2003, respectively.

72 Whereas the standard form for take charge requests provides that the requesting Member State must, by ticking a box, mention the relevant criterion for determining responsibility and provides the opportunity to supply the information necessary to check whether that criterion has been satisfied, the standard form for take back requests requires only that the requesting Member State indicate whether its request is based on Article 20(5) or Article 18(1)(b), (c) or (d) of the Dublin III Regulation, and does not contain any section relating to the criteria for determining responsibility set out in Chapter III of that regulation.

73 It should be pointed out, in the fourth place, that the opposite interpretation, according to which a take back request may be made only if the requested Member State can be designated as the Member State responsible pursuant to the criteria for determining responsibility set out in Chapter III of the Dublin III Regulation, is at variance with the general scheme of that regulation.

74 That interpretation would ultimately mean that the take charge and take back procedures must be conducted in exactly the same way in almost every respect and that they form, in practice, a single procedure making it necessary, first of all, to determine the Member State responsible for examining the application on the basis of those criteria for determining responsibility, and then, secondly, to submit to that Member State a request whose substantive correctness it will have to assess on the same basis.

75 However, if the EU legislature had intended to set up such a single procedure, it would not logically have chosen to establish, in the actual structure of that regulation, the existence of two separate procedures, applicable to different situations, set out in detail, and which are the subject of different provisions.

76 In the fifth and last place, the interpretation mentioned in paragraph 74 of this judgment would also be liable to undermine the achievement of certain objectives of the Dublin III Regulation.

77 That interpretation would imply, in the cases referred to in Article 18(1)(b) to (d) of that regulation, that the competent authorities of the second Member State could re-examine, de facto, the conclusion reached, at the end of the process for determining the Member State responsible for examining the application, by the competent authorities of the first Member State regarding its own responsibility, in so far as the persons concerned leave the territory of that Member State after it has started examining their applications, which would risk encouraging third-country nationals who submitted an application for international protection in a Member State to travel to other Member States, thereby causing secondary movements of people which is specifically what the Dublin III Regulation seeks to prevent by establishing uniform mechanisms and criteria for determining the Member State responsible (see, by analogy, judgments of 17 March 2016, *Mirza*, C-695/15 PPU, EU:C:2016:188, paragraph 52, and of 13 September 2017, *Khir Amayry*, C-60/16, EU:C:2017:675, paragraph 37).

78 The interpretation mentioned in paragraph 74 of this judgment could, moreover, have the consequence of undermining the essential principle of the Regulation, set out in Article 3(1) thereof, according to which an application for international protection must be examined by a single Member State only, in a situation where the process of determining responsibility carried out in the second Member State leads to an outcome different from that reached in the first Member State.

79 Moreover, the re-examination — which might, depending on the circumstances, be repeated on several occasions — of the outcome of the process for determining the Member State responsible, in a context where the application of the Regulation and effective access to an international protection procedure have already been ensured, would undermine the objective of the rapid processing of applications for international protection, mentioned in recital 5 of the Regulation.

80 It follows that, in the cases referred to in Article 23(1) and Article 24(1) of the Dublin III Regulation, the competent authorities concerned are not required, before making a take back request to another Member State, to establish, on the basis of the criteria for determining responsibility laid down by the Regulation and in particular of the criterion set out in Article 9 thereof, whether that latter Member State is responsible for examining the application.

81 Nonetheless, it should be pointed out that, in the cases referred to in Article 20(5) of the Dublin III Regulation, a possible transfer could then, in principle, occur without it previously having been established that the requested Member State is responsible for examining the application.

82 Accordingly, following such a transfer and on completion, in that Member State, of the process for determining the Member State responsible, it cannot be ruled out that a transfer, in the opposite direction, to the Member State which had previously requested that the applicant be taken back might have to be envisaged. Moreover, as the German Government and the Commission observed, in the light of the time limits laid down in Article 21(1) of the Regulation, it is probable that, at the end of that process, a take charge request can no longer properly be made by the Member State which had previously been required to take back that applicant.

83 With this in mind, it should be observed that the criteria for determining responsibility set out in Articles 8 to 10 of the Regulation, read in the light of recitals 13 and 14 thereof, are intended to promote the best interests of the child and the family life of the persons concerned, which are moreover guaranteed in Articles 7 and 24 of the Charter of Fundamental Rights. In those circumstances, a Member State cannot, in accordance with the principle of sincere cooperation, properly make a take back request, in a situation covered by Article 20(5) of the regulation, when the person concerned has provided the competent authority with information clearly establishing that that

Member State must be regarded as the Member State responsible for examining the application pursuant to those criteria for determining responsibility. In such a situation, it is, on the contrary, for that Member State to accept its own responsibility.

84 In the light of all of the foregoing considerations, the answer to the question referred in Case C-582/17 and to the questions referred in Case C-583/17 is that the Dublin III Regulation must be interpreted as meaning that a third-country national who lodged an application for international protection in a first Member State, then left that Member State and subsequently lodged a new application for international protection in a second Member State:

– is not, in principle, entitled to rely, in an action brought under Article 27(1) of the Regulation in that second Member State against a decision to transfer him or her, on the criterion for determining responsibility set out in Article 9 thereof;

– may, by way of exception, invoke, in such an action, that criterion for determining responsibility, in a situation covered by Article 20(5) of the Regulation, in so far as that third-country national has provided the competent authority of the requesting Member State with information clearly establishing that it should be regarded as the Member State responsible for examining the application pursuant to that criterion for determining responsibility.

Costs

85 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:

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 a third-country national who lodged an application for international protection in a first Member State, then left that Member State and subsequently lodged a new application for international protection in a second Member State:

– **is not, in principle, entitled to rely, in an action brought under Article 27(1) of the Regulation in that second Member State against a decision to transfer him or her, on the criterion for determining responsibility set out in Article 9 thereof;**

– **may, by way of exception, invoke, in such an action, that criterion for determining responsibility, in a situation covered by Article 20(5) of the Regulation, in so far as that third-country national has provided the competent authority of the requesting Member State with information clearly establishing that it should be regarded as the Member State responsible for examining the application pursuant to that criterion for determining responsibility.**

[Signatures]