Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

25 January 2018*

(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 — Procedures and periods laid down for making a take back request — Unlawful return of a third-country national to a Member State that has transferred him — Article 24 — Take back procedure — Article 27 — Remedy — Scope of judicial review — Circumstances after the transfer)

In Case C-360/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 27 April 2016, received at the Court on 29 June 2016, in the proceedings

Bundesrepublik Deutschland

v

Aziz Hasan,

THE COURT (Third Chamber),

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

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Mr Hasan, by W. Karczewski, Rechtsanwalt,

– the Polish Government, by B. Majczyna, acting as Agent,

– the Swiss Government, by U. Bucher, 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 7 September 2017,

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 18, 23 and 24 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 the Bundesrepublik Deutschland (Federal Republic of Germany) and Mr Aziz Hasan, a Syrian national, concerning the decision of the Bundesamt für Migration und Flüchtlinge (Federal Office for migration and refugees, Germany; 'the Office') rejecting Mr Hasan's asylum application and ordering him to be transferred to Italy.

Legal context

European Union law

Directive 2013/32/EU

3 Article 6(1) and (2) of 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) provides:

'When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

…

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. …'

The Dublin III Regulation

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

'(4) The Tampere conclusions [of the European Council at its special meeting 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.'

5 Article 3(1) and (2) of the Dublin III Regulation provides:

'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.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

…'

6 Article 18(1) of the Dublin III Regulation provides:

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

…

(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.'

7 Article 19(2) of that regulation is worded as follows:

'The obligations specified in Article 18(1) shall cease where the Member State responsible can establish, when requested to take charge or take back an applicant … that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

An application lodged after the period of absence referred to in the first subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.'

8 Paragraphs 1 to 3 of Article 23 of the Dublin III Regulation provide as follows:

'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.

2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit …

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.'

9 Paragraphs 1 to 3 of Article 24 of the Dublin III Regulation provide:

'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.

2. By way of derogation from Article 6(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [(OJ 2008 L 348, p. 98)], where a Member State on whose territory a person is staying without a residence document decides to search the Eurodac system …, the request to take back a person as referred to in Article 18(1)(b) or (c) of this Regulation, or a person as referred to in its Article 18(1)(d) whose application for international protection has not been rejected by a final decision, shall be made as quickly as possible and in any event within two months of receipt of the Eurodac hit …

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the requesting Member State becomes aware that another Member State may be responsible for the person concerned.

3. Where the take back request is not made within the periods laid down in paragraph 2, the Member State on whose territory the person concerned is staying without a residence document shall give that person the opportunity to lodge a new application.'

10 Article 25 of the Dublin III Regulation lays down the rules on responding to a take back request.

11 Article 26(1) of that regulation provides:

'Where the requested Member State accepts to take charge of or to take back an applicant or other person as referred to in Article 18(1)(c) or (d), the requesting Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection. …'

12 Article 27(1) and (3) of the Dublin III Regulation provides:

'1. 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.

…

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.'

13 Paragraphs 1 to 3 of Article 29 of that regulation are worded as follows:

'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.

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.'

German law

14 Paragraph 77 of the Asylgesetz (Law on asylum), in the version published on 2 September 2008 (BGBl. 2008 I, p. 1798), provides:

'In disputes falling within the scope of this Law, the court shall take into account the situation of fact and of law obtaining at the time of the last hearing; if judgment is given without a hearing, the relevant point in time shall be that at which judgment is given …'

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

15 Mr Hasan made an asylum application in Germany on 29 October 2014.

16 As a search on the 'Eurodac' system showed that Mr Hasan had already applied for international protection in Italy on 4 September 2014, the Office requested the Italian authorities, on 11 November 2014, to take him back on the basis of the Dublin III Regulation.

17 The Italian authorities did not reply to that take back request.

18 By decision of 30 January 2015, the Office rejected Mr Hasan's asylum application as inadmissible, on the ground that the Italian Republic was the Member State responsible for examining that application, and ordered that he be transferred to Italy.

19 Mr Hasan challenged the Office's decision before the Verwaltungsgericht Trier (Administrative Court, Trier, Germany), and at the same time made an application requesting that his action be given suspensive effect. That court rejected the application for suspensive effect on 12 March 2015 and then went on to dismiss the action itself on 30 June 2015.

20 On 3 August 2015, Mr Hasan was transferred to Italy. He returned illegally to Germany within the same month, however.

21 Mr Hasan appealed against the judgment of the Verwaltungsgerichtshof Trier (Administrative Court, Trier). His appeal was upheld, on 3 November 2015, by a decision of the Oberverwaltungsgericht Rheinland-Pfalz (Higher Administrative Court, Rhineland-Palatinate, Germany). The Oberverwaltungsgericht held in particular that Mr Hasan's transfer to Italy had taken place after the six-month time limit laid down in Article 29(1) of the Dublin III Regulation had expired, with the result that it was now the Federal Republic of Germany which was responsible for examining his asylum application.

22 The Federal Republic of Germany brought before the Bundesverwaltungsgericht (Federal Administrative Court, Germany) an appeal on a point of law (*Revision*) against the decision of the Oberverwaltungsgericht Rheinland-Pfalz (Higher Administrative Court, Rhineland-Palatinate).

23 The Bundesverwaltungsgericht (Federal Administrative Court) considers that the appeal court's analysis is wrong, as, in its view, a correct calculation of the period laid down in Article 29(1) of the Dublin III Regulation indicates that Mr Hasan's transfer to Italy took place before that period expired.

24 Nevertheless, the Bundesverwaltungsgericht (Federal Administrative Court) takes the view that it cannot be definitively established that the Italian Republic was initially responsible for examining Mr Hasan's asylum application, inasmuch as Italy may have to be ruled out as being so responsible, pursuant to Article 3(2) of that regulation, if there are any systemic flaws, as referred to in that provision, in its asylum procedure and reception conditions for applicants for international protection.

25 That said, the Bundesverwaltungsgericht (Federal Administrative Court) points out that it will not be necessary to resolve that issue if, as a result of Mr Hasan's illegal return to Germany, responsibility for examining his asylum application had already been transferred to the Federal Republic of Germany by the time the decision of the appeal court was given or whether a take back procedure could still be undertaken at that time.

26 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In a case where a third-country national, after lodging a second asylum application in another Member State (here, Germany), was transferred to the Member State having original responsibility for the first asylum application (here, Italy) because of a court's rejection of his application for suspension of the transfer decision under [the Dublin III Regulation] and then immediately returned illegally to the second Member State (here, Germany):

(a) According to the principles of the Dublin III Regulation, is the factual situation that is relevant for a court's review of a transfer decision the situation that pertained at the time of the transfer, because responsibility was definitively determined by transfer within the time limit and therefore the rules in the Dublin III Regulation concerning responsibility are no longer applicable to further developments, or is it necessary to take into consideration subsequent developments in the circumstances relevant to responsibility in general, for example, expiry of time limits for a take back or (renewed) transfer?

(b) Following determination of responsibility on the basis of the transfer decision, can further transfers be made to the Member State having original responsibility, and does that Member State remain obligated to take charge of the third-country national?

(2) If responsibility is not definitively determined by the transfer: Which of the provisions listed below applies in such a case to a person described in Article 18(1)(b), (c), or (d) of the Dublin III Regulation on account of an ongoing appeal against the already enforced transfer decision:

(a) Article 23 of the Dublin III Regulation (analogously), with the result that, in the case of a new take back request that is not submitted within the time limit, responsibility can shift in accordance with Article 23(2) and (3) of the Dublin III Regulation, or

(b) Article 24 of the Dublin III Regulation (analogously), or

(c) neither of the provisions set forth in (a) and (b)?

(3) In the event that neither Article 23 nor Article 24 applies (analogously) to such a person (question 2(c)): Can further transfers be made to the Member State having original responsibility (here, Italy) on the basis of the challenged transfer decision until conclusion of the appeal against such decision, and does that Member State remain obligated to take charge of the third-country national, irrespective of whether further take back requests have been submitted without complying with the time limits in Article 23(3) or Article 24(2) of the Dublin III Regulation and irrespective of the transfer time limits in Article 29(1) and (2) [of that] regulation?

(4) In the event that Article 23 of the Dublin III Regulation applies (analogously) to such a person (question 2(a)): Is the new take back request tied (analogously) to a new time limit under Article 23(2) of the Dublin III Regulation? If so: Does this new time limit start to run when the responsible authority learns of re-entry, or does another event determine its commencement?

(5) In the event that Article 24 of the Dublin III Regulation applies (analogously) to such a person (question 2(b)):
   (a) Is the submission of a new take back request tied (analogously) to a new time limit under Article 24(2) of the Dublin III Regulation? If so: Does this new time limit start to run when the responsible authority learns of re-entry, or does another event determine its commencement?
   (b) If the other Member State (here, Germany) allows a time limit to expire that is required to be complied with (analogously) under Article 24(2) of the Dublin III Regulation: Does the lodging of a new asylum application pursuant to Article 24(3) of that regulation directly establish the responsibility of the other Member State (here, Germany), or may it, despite the new asylum application, submit a new take back request to the Member State having original responsibility (here, Italy) without being bound by a time limit, or transfer the foreign national to that Member State without submitting a take back request?
   (c) If the other Member State (here, Germany) allows a time limit to expire that is required to be complied with (analogously) under Article 24(2) of the Dublin III Regulation: Is the lis pendens of an asylum application lodged in the other Member State (here, Germany) prior to transfer equivalent to the lodging of a new asylum application pursuant to Article 24(3) of the Dublin III Regulation?
   (d) If the other Member State (here, Germany) allows a time limit to expire that is required to be complied with (analogously) under Article 24(2) of the Dublin III Regulation and the foreign national neither lodges a new asylum application and the lis pendens of an asylum application lodged in the other Member State (here, Germany) prior to transfer is not equivalent to the lodging of a new asylum application pursuant to Article 24(3) of the Dublin III Regulation: Can the other Member State (here, Germany) submit a new take back request to the Member State having original responsibility (here, Italy) without being bound by a time limit, or transfer the foreign national to that Member State without submitting a take back request?'

Consideration of the questions referred

Question 1(a)

27 As a preliminary point, it should be noted that, according to the order for reference, the national procedural rules applicable in asylum matters provide that the court hearing an action against a transfer decision must, as a rule, decide the case on the basis of the factual situation obtaining at the time of the last hearing before that court or, where there is no hearing, at the time when the court gives its decision on the matter.

28 That being so, the referring court, by question 1(a), must be taken to be asking, in essence, whether Article 27(1) of the Dublin III Regulation is to be interpreted as precluding a provision of national law, such as that at issue in the main proceedings, which provides that the factual situation that is relevant for the review by a court or tribunal of a transfer decision is the situation obtaining at the time of the last hearing before the court or tribunal determining the matter or, where there is no hearing, at the time when that court or tribunal gives a decision on the matter.

29 Article 27(1) of the Dublin III Regulation provides that an application 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.

30 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 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).

31 Furthermore, it follows from the Court's case-law concerning Article 29 of the Dublin III Regulation that, in view of (i) the objective mentioned in recital 19 of the regulation of guaranteeing, in accordance with Article 47 of the Charter of Fundamental Rights, effective protection of the persons concerned and (ii) the objective set out in recital 5 of the regulation of determining rapidly the Member State responsible for processing an application for international protection, an applicant must have an effective and rapid remedy available to him which enables him to rely on circumstances subsequent to the adoption of the decision to transfer him, when the correct application of the Dublin III Regulation depends upon those circumstances being taken into account (see, to that effect, judgment of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 44).

32 A legislative provision such as that at issue in the main proceedings, which enables 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 (see, by analogy, judgment of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 45).

33 In that context, Article 27(1) of the Dublin III Regulation cannot be interpreted as precluding such a legislative provision merely because that provision may lead the court or tribunal hearing an action brought against a transfer decision to take into account, in a situation such as that at issue in the main proceedings, circumstances that are subsequent not only to the adoption of that decision but also to the transfer of the person concerned pursuant to the decision.

34 Admittedly, such circumstances are not likely to be relevant for the purpose of applying rules in the Dublin III Regulation which, like those set out in Article 29(1) and (2), govern the conduct of the take back procedure prior to the transfer.

35 Nonetheless, the carrying out of the transfer, which is merely the practical implementation of the transfer decision, does not, in itself, definitively establish the responsibility of the Member State to which the person concerned has been transferred.

36 That is because, first, there is nothing in the Dublin III Regulation which provides either that the carrying out of the transfer is to have such an effect or that that carrying out is relevant for the purpose of determining the responsible Member State.

37 Second, it is, on the contrary, quite clear from Article 29(3) of that regulation that the person concerned must be accepted back by the Member State which transferred him where he has been transferred erroneously or the transfer decision is overturned after the transfer has been carried out, which necessarily implies that the responsibility of the Member State to which the person concerned has been transferred may, in certain cases, be called into question after the transfer has taken place.

38 Third, an approach other than that would, moreover, be liable to render largely redundant the appeal or review for which Article 27(1) of the Dublin III Regulation provides and to undermine the judicial protection guaranteed to the persons concerned, since it follows from Article 27(3) of the regulation that the introduction of an appeal or of a request for review does not necessarily entail suspension of the transfer decision and that the fact that such an appeal or request has been introduced does not automatically prevent the transfer from being carried out before the legality of that decision has been assessed by a court or tribunal.

39 Fourth, certain provisions of the Dublin III Regulation may result in the responsibility of a Member State being called into question owing to circumstances that have arisen after the transfer to that Member State has been carried out. That is the case, in particular, of Article 19(2) of the regulation when the person concerned has, after that transfer, left the territory of the Member States for a period of at least three months before making a new application for international protection in another Member State (see, to that effect, judgment of 7 June 2016, *Karim*, C-155/15, EU:C:2016:410, paragraph 17).

40 In the light of the foregoing, the answer to question 1(a) is that Article 27(1) of the Dublin III Regulation, read in the light of recital 19 of the regulation and Article 47 of the Charter of Fundamental Rights, must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, which provides that the factual situation that is relevant for the review by a court or tribunal of a transfer decision is that obtaining at the time of the last hearing before the court or tribunal determining the matter or, where there is no hearing, at the time when that court or tribunal gives a decision on the matter.

Question 1(b) and questions 2 and 3

41 By question 1(b) and questions 2 and 3, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 23 and 24 of the Dublin III Regulation must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national who, after having made an application for international protection in a first Member State (Member State 'A'), was transferred to Member State 'A' as a result of the rejection of a fresh application lodged in a second Member State (Member State 'B') and has then returned, without a residence document, to Member State 'B', a take back procedure may be undertaken in respect of that third-country national or whether it is possible to transfer that person anew to Member State 'A' without such a procedure being followed.

42 The scope of the take back procedure is defined in Articles 23 and 24 of the Dublin III Regulation (order of 5 April 2017, *Ahmed*, C-36/17, EU:C:2017:273, paragraph 26).

43 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 18(1)(b) to (d) of the regulation.

44 The last-mentioned provisions refer to a person who, first, has lodged an application for international protection, which is under examination, has withdrawn such an application 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.

45 Accordingly, a third-country national, such as the person in question in the main proceedings, who is staying, without a residence document, on the territory of one Member State after making an application for international protection in another Member State, which has not in the meantime been granted by the latter Member State, must be considered to be within the scope of the take back procedure provided for by the Dublin III Regulation.

46 As regards the rules that have to be followed in order to duly complete that procedure, it must be observed that, whilst Article 23 of the Dublin III Regulation governs situations in which a new application for international protection has been lodged in the requesting Member State, Article 24 of the regulation concerns cases in which no new application has been lodged in that Member State (see, to that effect, order of 5 April 2017, *Ahmed*, C-36/17, EU:C:2017:273, paragraph 26).

47 It follows that the procedure provided for in Article 24 of the Dublin III Regulation can apply to a person such as the one in question in the main proceedings who, after having made an application for international protection in one Member State, returns illegally to the territory of another Member State, without lodging a new application for international protection there.

48 That analysis is not affected by the fact that such a person has, in the course of a first stay on the territory of the second Member State, already made an application for international protection, which was rejected within the framework laid down in Article 26(1) of the Dublin III Regulation.

49 As that application is no longer under examination in the second Member State, the aforementioned fact does not mean that the person concerned may be equated to a person who has lodged a new application for international protection, which would have to be either rejected, pursuant to Article 26(1) of the Dublin III Regulation, before a transfer can be carried out or examined by the second Member State in accordance with Article 23(3) of the regulation in the case of delay in the implementation of the take back procedure.

50 Similarly, the fact that the decision rejecting an application for international protection made during a first stay on the territory of the Member State concerned has been the subject of an appeal that is pending before the competent court cannot render Article 24 of the Dublin III Regulation inapplicable in a situation such as that at issue in the main proceedings, as, where the bringing of that appeal has no suspensive effect, that decision must be considered to have effect, as provided for in that regulation, and thus to entail the closure of the administrative procedure instigated following the lodging of the application for international protection.

51 Moreover, given that the EU legislature laid down, in Article 24 of the Dublin III Regulation, a specific procedure applicable to a third-country national such as the person in question in the main proceedings –– a procedure which involves inter alia making an application to the requested Member State within mandatory periods the expiry of which may have an impact on that third-country national's situation –– that national cannot be transferred to another Member State on the basis of a transfer decision previously adopted in his regard, which has already been implemented in the past, without that procedure being duly completed.

52 An approach other than that would thus be incompatible with the wording of Articles 18 and 24 of the Dublin III Regulation, which draws no distinction between a first and second stay in a Member State other than the State in which the first application for international protection was made.

53 In addition, given that it follows from the reasoning in paragraphs 35 to 39 of the present judgment that the carrying out of the transfer does not, in itself, definitively establish the responsibility of the Member State to which the person concerned has been transferred, a further transfer cannot be envisaged unless the situation of that person has been re-examined for the purpose of verifying that responsibility has not been transferred to another Member State following that person's transfer.

54 It must be pointed out in that regard that such a re-examination of the situation of the person concerned may be undertaken without jeopardising the objective of the rapid processing of applications for international protection, as that re-examination merely entails taking account of the changes that have occurred since the first transfer decision was adopted.

55 Consequently, the answer to question 1(b) and questions 2 and 3 is that Article 24 of the Dublin III Regulation must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national who, after having made an application for international protection in a first Member State (Member State 'A'), was transferred to Member State 'A' as a result of the rejection of a fresh application lodged in a second Member State (Member State 'B') and has then returned, without a residence document, to Member State 'B', a take back procedure may be undertaken in respect of that third-country national and it is not possible to transfer that person anew to Member State 'A' without such a procedure being followed.

Question 4

56 In view of the answer to question 1(b) and questions 2 and 3, there is no need to reply to question 4.

Question 5(a)

57 By question 5(a), the referring court asks, in essence, whether Article 24(2) of the Dublin III Regulation must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national has returned, without a residence document, to the territory of a Member State that has previously transferred him to another Member State, a take back request must be submitted within the periods prescribed in that provision and, if so, whether those periods may begin to run before the requesting Member State has become aware that the person concerned has returned to its territory.

58 The first subparagraph of Article 24(2) of the Dublin III Regulation provides that where a Member State on whose territory a person is staying without a residence document decides to search the Eurodac system, the take back request is to be made as quickly as possible and in any event within two months of receipt of the Eurodac hit.

59 The second subparagraph of Article 24(2) of the Dublin III Regulation provides that if the take back request is based on evidence other than data obtained from the Eurodac system, it is to be sent to the requested Member State within three months of the date on which the requesting Member State becomes aware that another Member State may be responsible for the person concerned.

60 In that regard, the Court notes that the take back procedures must necessarily be conducted in accordance with the rules laid down, inter alia, in Chapter VI of the Dublin III Regulation and that they must, in particular, be carried out in compliance with a series of mandatory time limits (see, to that effect, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraphs 49 and 50).

61 Given that the EU legislature has not drawn any distinction in Article 24 of the Dublin III Regulation between situations in which a take back procedure is begun for the first time and situations in which that procedure would have to be conducted afresh as the result of the return, without a residence document, of the person concerned to the requesting Member State after a transfer, the time limits prescribed in Article 24 must therefore be complied with in the latter case as well.

62 As regards the calculation of those time limits, it must be noted that they are intended to provide a framework for the take back procedure and make a decisive contribution to achieving the objective of rapidly processing applications for international protection by ensuring that the take back procedure will be implemented without undue delay (see, by analogy, judgments of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraphs 53 and 54, and of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 31).

63 To that end, those time limits ensure that the requesting Member State initiates the take back procedure within a reasonable period, starting from the point at which it has information allowing it to submit a take back request to another Member State, the time limit applicable in that context varying according to the nature of that information.

64 It follows that the same time limits cannot, as a matter of logic, begin to run at a time when the requesting Member State did not have information allowing it to initiate the take back procedure.

65 That will be the case, in a situation such as that at issue in the main proceedings, not only where the requesting Member State has no knowledge of the matters establishing the responsibility of another Member State but also –– in a context in which the internal borders may in principle be crossed without persons being subject to border checks –– where the requesting Member State is not aware that the person concerned is in its territory.

66 In addition, if those time limits were considered to run from the time when the Member State, during an initial take charge or take back procedure, had information indicating that another Member State was responsible, that could appreciably limit the effectiveness of the procedures provided for by the Dublin III Regulation and, moreover, would be likely to encourage the persons concerned to return illegally to the requesting Member State after a first transfer, thereby frustrating the application of the principles and rules laid down by that regulation (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).

67 In a situation in which the person concerned has returned, without a residence document, to the territory of the requesting Member State following a first transfer, that interpretation would greatly reduce the period available to that Member State to send a take back request, or even rule out all possibility of sending such a request before giving the person concerned the opportunity of lodging a new application for international protection, when that person's return to that territory occurred more than two or three months after the time when the requesting Member State had, during the first take charge or take back procedure, information indicating that another Member State was responsible.

68 Accordingly, the period prescribed in the first subparagraph of Article 24(2) of the Dublin III Regulation –– which is applicable only when a Member State on whose territory a person is staying without a residence document decides to search the Eurodac system –– is relevant if the requesting Member State has decided to proceed in that way in a take back procedure initiated following the return of the person concerned to its territory after a first transfer, which necessarily presupposes that that Member State is aware that the person concerned is in its territory.

69 When the Member State concerned has decided not to search the Eurodac system, the second subparagraph of Article 24(2) of that regulation applies. In such a case, the period mentioned in that provision begins to run only from the time when the requesting Member State becomes aware (i) of the presence of the person concerned on its territory and (ii) of matters establishing the responsibility of another Member State for the person concerned.

70 In view of the foregoing considerations, the answer to question 5(a) is that Article 24(2) of the Dublin III Regulation must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national has returned, without a residence document, to the territory of a Member State that has previously transferred him to another Member State, a take back request must be submitted within the periods prescribed in that provision and those periods may not begin to run until the requesting Member State has become aware that the person concerned has returned to its territory.

Question 5(b)

71 By question 5(b), the referring court asks, in essence, whether Article 24(3) of the Dublin III Regulation must be interpreted as meaning that, where a take back request is not made within the periods laid down in Article 24(2) of that regulation, the Member State on whose territory the person concerned is staying without a residence document is responsible for examining the new application for international protection which that person must be permitted to lodge.

72 Article 24(3) of the Dublin III Regulation specifies that where the take back request is not made within the periods laid down in Article 24(2) of the regulation, the Member State on whose territory the person concerned is staying without a residence document is to give that person the opportunity to lodge a new application.

73 It should be noted that the wording of that provision does not, on its own, make it possible to determine which Member State should normally be responsible for examining such an application.

74 Nonetheless, it follows from settled case-law of the Court that, where a provision of EU law is open to several interpretations, preference must be given to the interpretation which ensures that the provision retains its effectiveness (see, to that effect, judgment of 27 October 2011, *Commission* v *Poland*, C-311/10, not published, EU:C:2011:702, paragraph 20 and the case-law cited).

75 In that regard, it must be stressed that, if Article 24(3) of the Dublin III Regulation were to be interpreted as signifying merely that the person concerned must have the right to lodge an application for international protection and as thus having no effect on the determination of the Member State responsible for examining that application, that provision would be ineffective.

76 Thus, it follows from Article 6(1) and (2) of Directive 2013/32 that the Member States are, generally, obliged to register any application for international protection made by a third-country national to the national authorities falling within the scope of that directive and that they must then ensure that the persons concerned have an effective opportunity to lodge their application as soon as possible.

77 Accordingly, in order to ensure that Article 24(3) of the Dublin III Regulation retains its effectiveness, it must be interpreted as meaning that, in the event that the periods laid down in Article 24(2) of the regulation have expired, where the person concerned decides to make use of the opportunity that he must be given by the Member State on whose territory he is staying to lodge a new application for international protection, that Member State is responsible for examining the new application.

78 That interpretation is also borne out by the objective pursued by paragraphs 2 and 3 of Article 24 of the Dublin III Regulation, which has been described in paragraph 62 of the present judgment.

79 If the only consequence of lodging a new application for international protection under the conditions laid down in those provisions were that the Member State on whose territory the person concerned is staying may thenceforth initiate the take back procedure under the conditions laid down in Article 23 of the Dublin III Regulation, the rules in paragraphs 2 and 3 of Article 24 of the regulation would not contribute to achieving the objective of rapidly processing applications for international protection, since the expiry of those periods would not be a bar to carrying out a take back procedure, which would again delay examination of the application for international protection made by the person concerned.

80 Accordingly, the answer to question 5(b) is that Article 24(3) of the Dublin III Regulation must be interpreted as meaning that, where a take back request is not made within the periods laid down in Article 24(2) of that regulation, the Member State on whose territory the person concerned is staying without a residence document is responsible for examining the new application for international protection which that person must be permitted to lodge.

Question 5(c)

81 By question 5(c), the referring court asks, in essence, whether Article 24(3) of the Dublin III Regulation must be interpreted as meaning that the fact that an appeal procedure brought against a decision that rejected a first application for international protection made in a Member State is still pending is to be regarded as equivalent to the lodging of a new application for international protection in that Member State, as referred to in that provision.

82 In that regard it is important to point out, in the first place, that Article 24(3) of the Dublin III Regulation refers explicitly to the obligation of the Member State in question to give the person concerned the opportunity to lodge a new application for international protection.

83 It follows that the EU legislature intended that the expiry of the periods laid down in Article 24(2) of that regulation should bear on the opening of a new international protection procedure, rather than on the outcome of procedures for processing applications for international protection that are under way.

84 In the second place, it should be borne in mind that, as is clear from the reasoning in paragraphs 48 to 50 of the present judgment, where the bringing of an appeal against a decision rejecting an application for international protection has no suspensive effect, that decision must be considered to have full effect and thus to entail the closure of the administrative procedure initiated following the lodging of an application for international protection.

85 Consequently, the answer to question 5(c) is that Article 24(3) of the Dublin III Regulation must be interpreted as meaning that the fact that an appeal procedure brought against a decision that rejected a first application for international protection made in a Member State is still pending is not to be regarded as equivalent to the lodging of a new application for international protection in that Member State, as referred to in that provision.

Question 5(d)

86 By question 5(d), the referring court asks, in essence, whether Article 24(3) of the Dublin III Regulation must be interpreted as meaning that, where the take back request is not made within the periods laid down in Article 24(2) of that regulation and the person concerned has not made use of the opportunity that he must be given to lodge a new application for international protection, the Member State on whose territory that person is staying without a residence document can still make a take back request or transfer the person concerned to another Member State without making such a request.

87 Article 24(3) of the Dublin III Regulation can be distinguished from other provisions relating to the expiry of periods laid down in the regulation in that it does not provide that the expiry of the periods that it concerns entails, in itself, a transfer of responsibility.

88 As follows from the answer to question 5(b), when Article 24 of that regulation applies, such a transfer of responsibility depends upon the person concerned making use of the opportunity that he must be given to lodge a new application for international protection in the Member State on whose territory he is staying.

89 As the EU legislature has not provided for the expiry of the periods set out in Article 24(2) of the regulation to have any other effect, it must be held that, in cases in which the person concerned does not make use of that opportunity, it remains open to the Member State on whose territory that person is staying to take action accordingly and to initiate, should it so wish, a take back procedure with a view to ensuring that that person goes back to the Member State in which he lodged an application for international protection.

90 However, since (i) the responsible Member State is obliged, in accordance with Article 18(1)(b) to (d) of the Dublin III Regulation, to take back, under the conditions laid down in Articles 23 to 25 and 29 of that regulation, the person concerned and (ii) none of those articles provides for that person to be transferred where there is no explicit or implicit agreement to that effect on the part of the requested Member State, Article 24(3) of that regulation cannot be understood as permitting a Member State to transfer the person to another Member State without making a take back request.

91 Accordingly, the answer to question 5(d) is that Article 24(3) of the Dublin III Regulation must be interpreted as meaning that, where the take back request is not made within the periods laid down in Article 24(2) of that regulation and the person concerned has not made use of the opportunity that he must be given to lodge a new application for international protection:

– the Member State on whose territory that person is staying without a residence document can still make a take back request, and

– that provision does not allow the person to be transferred to another Member State without such a request being made.

Costs

92 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 27(1) 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 the light of recital 19 of the regulation and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, which provides that the factual situation that is relevant for the review by a court or tribunal of a transfer decision is that obtaining at the time of the last hearing before the court or tribunal determining the matter or, where there is no hearing, at the time when that court or tribunal gives a decision on the matter.**

2. **Article 24 of Regulation No 604/2013 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national who, after having made an application for international protection in a first Member State (Member State 'A'), was transferred to Member State 'A' as a result of the rejection of a fresh application lodged in a second Member State (Member State 'B') and has then returned, without a residence document, to Member State 'B', a take back procedure may be undertaken in respect of that third-country national and it is not possible to transfer that person anew to Member State 'A' without such a procedure being followed.**

3. **Article 24(2) of Regulation No 604/2013 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national has returned, without a residence document, to the territory of a Member State that has previously transferred him to another Member State, a take back request must be submitted within the periods prescribed in that provision and those periods may not begin to run until the requesting Member State has become aware that the person concerned has returned to its territory.**

4. **Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that, where a take back request is not made within the periods laid down in Article 24(2) of that regulation, the Member State on whose territory the person concerned is staying without a residence document is responsible for examining the new application for international protection which that person must be permitted to lodge.**

5. **Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that the fact that an appeal procedure brought against a decision that rejected a first application for international protection made in a Member State is still pending is not to be regarded as equivalent to the lodging of a new application for international protection in that Member State, as referred to in that provision.**

6. **Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that, where the take back request is not made within the periods laid down in Article 24(2) of that regulation and the person concerned has not made use of the opportunity that he must be given to lodge a new application for international protection:**

   – **the Member State on whose territory that person is staying without a residence document can still make a take back request, and**

   – **that provision does not allow the person to be transferred to another Member State without such a request being made.**

[Signatures]