ECLI:EU:C:2018:368

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

31 May 2018 (*)

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for the examination of an application for international protection lodged in a Member State by a third-country national — Procedures for taking charge and taking back — Article 26(1) — Adoption and notification of the transfer decision before the acceptance of the take back request by the requested Member State)

In Case C-647/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal administratif de Lille (Administrative Court, Lille, France), made by decision of 1 December 2016, received at the Court on 15 December 2016, in the proceedings

Adil Hassan

v

Préfet du Pas-de-Calais,

THE COURT (Second Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, A. Rosas, C. Toader, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the French Government, by D. Colas, E. de Moustier and E. Armoet, acting as Agents,

– the Hungarian Government, by M.Z Fehér, acting as Agent,

– the European Commission, by M. Condou-Durande, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 20 December 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 26(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 (OJ 2013 L 180, p. 31) ('the Dublin III Regulation').

2 The request has been made in proceedings between Mr Adil Hassan, an Iraqi national, and the Prefect of Pas-de-Calais (Prefect de Pas-de-Calais, France) concerning the legality of the decision ordering his transfer to Germany.

Legal context

EU law

Regulation (EU) No 603/2013

3 Under recital 4 of Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ 2013 L 180, p. 1):

'For the purposes of applying [the Dublin III Regulation], it is necessary to establish the identity of applicants for international protection and of persons apprehended in connection with the unlawful crossing of the external borders of the Union. It is also desirable, in order effectively to apply [the Dublin III Regulation], and in particular Article 18(1)(b) and (d) thereof, to allow each Member State to check whether a third-country national or stateless person found illegally staying on its territory has applied for international protection in another Member State.'

4 Article 1(1) of Regulation No 603/2013 provides:

'A system known as "Eurodac" is hereby established, the purpose of which shall be to assist in determining which Member State is to be responsible pursuant to Regulation (EU) No 604/2013 for examining an application for international protection lodged in a Member State by a third-country national or a stateless person, and otherwise to facilitate the application of Regulation (EU) No 604/2013 under the conditions set out in this Regulation.'

5 Article 9(1) of Regulation No 603/2013 states:

‘Each Member State shall promptly take the fingerprints of all fingers of every applicant for international protection of at least 14 years of age and shall, as soon as possible and no later than 72 hours after the lodging of his or her application for international protection, as defined by Article 20(2) of [the Dublin III Regulation], transmit them together with the data referred to in Article 11(b) to (g) of this Regulation to the Central System.’

The Dublin III Regulation

6 Recitals 4, 5, 9 and 19 of the Dublin III Regulation state:

‘(4) The Tampere conclusions [conclusions of the European Council, at its special meeting in Tampere on 15 and 16 October 1999] also stated that the [Common European Asylum System] should include, in the short term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

...

(9) In the light of the results of the evaluations undertaken on the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying [Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1)], while making the necessary improvements, in the light of experience, to the effectiveness of the Dublin system and the protection granted to applicants under that system. ...

...

(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.’

7 Article 3 of the Dublin III Regulation, entitled ‘Access to the procedure for examining an application for international protection’, provides in paragraph 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.’

8 Article 5 of that regulation states:

‘1. In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. ...

2. The personal interview may be omitted if:

...

(b) after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

3. The personal interview shall take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

...’

9 Article 18 of that regulation, entitled ‘Obligations of the Member State responsible’, provides in paragraph 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.’

10 Article 19 of the Dublin III Regulation provides:

‘1. Where a Member State issues a residence document to the applicant, the obligations specified in Article 18(1) shall be transferred to that Member State.

2. 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 or another person as referred to in Article 18(1)(c) or (d), 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.

...

3. The obligations specified in Article 18(1)(c) and (d) shall cease where the Member State responsible can establish, when requested to take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

... ’

11 According to the first subparagraph of Article 21(1) of that regulation:

‘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 of the regulation provides:

‘1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of receipt of the request.

...

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 Under Article 24 of that regulation:

‘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 ...

...

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.

...'

14 Article 25 of the Dublin III 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.'

15 Article 26 of that regulation, entitled 'Notification of a transfer decision', states:

'1. 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. ...

2. The decision referred to in paragraph 1 shall contain information on the legal remedies available, including on the right to apply for suspensive effect, where applicable, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned should appear, if that person is travelling to the Member State responsible by his or her own means.

... '

16 Article 27 of that regulation, entitled 'Remedies', is worded as follows:

'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.

2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

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. ...

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

...'

17 Article 28 of that regulation, entitled 'Detention', states:

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

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

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

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

... '

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

'1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

...

2. Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned

and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds.'

Regulation (EC) No 1560/2003

19 Article 4 of Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 222, p. 3) ('the Implementing Regulation'), entitled 'Processing of requests for taking back', provides:

'Where a request for taking back is based on data supplied by the Eurodac Central Unit and checked by the requesting Member State ... the requested Member State shall acknowledge its responsibility unless the checks carried out reveal that its obligations have ceased under the second subparagraph of Article [20(5) or Article 19(1)(2) or (3) of the Dublin III Regulation]. The fact that obligations have ceased on the basis of those provisions may be relied on only on the basis of material evidence or substantiated and verifiable statements by the asylum seeker.'

20 In accordance with Article 6 of the Implementing Regulation, entitled 'Positive reply':

'Where the Member State accepts responsibility, the reply shall say so, specifying the provision of [the Dublin III Regulation] that is taken as a basis, and shall include practical details regarding the subsequent transfer, such as contact particulars of the department or person to be contacted.'

French law

21 The first paragraph of point III of Article L. 512-1 of the Code de l'entrée et du séjour des étrangers et du droit d'asile (Code on the entry and residence of foreign nationals and the right to asylum; 'Ceseda'), in the version in force at the material time, states:

'A foreign national who is detained pursuant to Article L. 551-1 may apply to the President of the administrative court for annulment of the decision requiring him to leave French territory, the decision refusing a period for voluntary departure, the decision on the destination country and the decision prohibiting return to French territory or movement on French territory which, depending on the circumstances, may accompany such detention, within 48 hours of their notification, when such decisions are notified with the detention order. ... '

22 The first paragraph of Article L.551-1 is worded as follows:

'In the situations provided for in paragraphs 1 to 7 of part I of Article L. 561-2, a foreign national who does not provide effective guarantees against the risk referred to in paragraph 3 of part II of Article L. 511-1 may be detained by the administrative authority... for a 48-hour period.'

23 Point I of Article L. 561-2 of that code provides:

'The administrative authority may take a decision to place a foreign national who cannot immediately leave French territory under house arrest, although it remains reasonable to remove him, where that foreign national:

1. Must be returned to the competent authorities of a Member State of the European Union ... or made the subject of a transfer decision under Article L. 742-3;

...

7. Having been made subject to a decision to place him under house arrest under paragraphs 1 to 6 of this article or a decision to place him in administrative detention ..., has not complied with the expulsion measure against him or, having complied with that measure, has returned to France although that measure is still enforceable.

... ’

24 The first paragraph of Article L. 742-1 of Ceseda, contained in Chapter II, entitled ‘Procedure for determining the State responsible for examining the application for asylum’, of Book VII of that code, headed ‘The right to asylum’, provides:

‘Where the administrative authority takes the view that the examination of an asylum application falls within the competence of another State to which it intends to make a request, the foreign national is entitled to remain on French territory until the end of the procedure for determining the State responsible for examining his application and, where relevant, until his actual transfer to that State. ... ’

25 Article L. 742-3 of that code states:

‘Subject to the second paragraph of Article L. 742-1, the foreign national the examination of whose application for asylum is the responsibility of another State may be transferred to the State responsible for that examination.

Any decision to transfer shall be made by reasoned written decision taken by the administrative authority.

That decision shall be notified to the person concerned. It shall mention the remedies available and the periods within which these may be exercised, as well as the right to inform, or to have informed, that person’s consulate, an adviser or any person of his choice. ...’

26 Point I of Article L. 742-4 of Ceseda provides:

‘A foreign national who is the subject of a transfer decision under Article L. 742-3 may, within 15 days following notification of that decision, make a request for the annulment of that decision to the President of the administrative court.

The President or a judge designated by him for that purpose ... shall take a decision within 15 days from the making of that request.

...’

27 Article L. 742-5 of the code is worded as follows:

‘Articles L. 551-1 and L. 561-2 are applicable to a foreign national who is the subject of a transfer decision from the time of the notification of that decision.

The transfer decision may not be implemented automatically or before the expiry of a 15-day period or, if a decision to place the person in detention pursuant to Article L. 551-1 or to place him under house arrest pursuant to Articles L. 561-2 was notified with the transfer decision, before the expiry of a 48-hour period or before the administrative court has taken a decision, if a request has been made to it.'

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

28 Mr Adil Hassan was arrested on 26 November 2016 by the services of the Police de l'air et des frontières du Pas-de-Calais (Pas-de-Calais Air and Border Police, France) in the restricted access area of the Port of Calais ferry terminal (France). A search in the Eurodac system conducted by those services showed that fingerprints had been taken by the German authorities on 7 November and 14 December 2015 and that he had applied, at that time, for international protection in Germany, without, however, making any such application in France.

29 On the day on which the arrest and consultation of the Eurodac system took place, the Prefect of the Pas-de-Calais sent a request to the German authorities to take back Mr Hassan and decided at the same time to transfer him to Germany and place him in administrative detention. That decision was notified to Mr Hassan on the same date.

30 Mr Hassan challenged the administrative detention measure before the juge des libertés et de la détention (judge responsible for matters relating to liberty and detention) at the tribunal de grande instance de Lille (Regional Court, Lille, France) on the basis of Article L. 512-1, point III, of Ceseda. By decision of 29 November 2016, that court ordered the lifting of that measure.

31 Mr Hassan also lodged an appeal with suspensive effect before the tribunal administratif de Lille (Administrative Court, Lille, France) against the decision of 26 November 2016, in so far as it ordered his transfer to Germany.

32 In that appeal, Mr Hassan argues, inter alia, that the transfer decision infringes Article 26 of the Dublin III Regulation, since it was taken and notified to him before the requested Member State, in this case the Federal Republic of Germany, had explicitly or implicitly responded to the French authorities' take back request.

33 The Prefect of the Pas-de-Calais, for his part, contends that neither Article 26 nor any provision of national law precludes him from taking a transfer decision as soon as detention takes place and from notifying that decision to the person concerned, who has available to him the remedies provided for in Article 27 of the Dublin III Regulation against that decision. He argues that, under national law, he was even required, before detaining Mr Hassan, to take a prior transfer decision, without waiting for the reply from the requested Member State. In any event, the transfer cannot be carried out until the requested Member State has agreed to take back the person concerned.

34 In that regard, the referring court observes that the Prefect of the Pas-de-Calais was not obliged to take the transfer decision in order to be able to place Mr Hassan in administrative detention, since such detention is provided for in Article 28 of the Dublin III Regulation, which is directly applicable. That court acknowledges, however, that the national law on which the Prefect relied in order to adopt that transfer decision does not prevent the adoption of such a decision at the same time as the decision relating to detention. It, therefore, questions whether such an administrative practice is compatible with Article 26 of the Dublin III Regulation.

35 The referring court points out that the national courts are divided on this matter, explaining that some administrative courts take the view that a transfer decision may be taken and notified to the person concerned before receipt of the reply from the requested Member State, while other courts consider that the requesting Member State must wait for the outcome of the procedure for determining the Member State responsible, as provided for in Articles 20 to 25 of the Dublin III Regulation, before taking and notifying such a decision.

36 The referring court, for its part, takes the view, that both the literal reading of the various language versions of Article 26 of the Dublin III Regulation and the teleological interpretation of that provision, and of those in the context in which it fits, tend to favour the second interpretation, which is confirmed, moreover, by the drafting history of the Dublin III Regulation.

37 That court states, however, that the adoption and notification of a transfer decision before the reply from the requested Member State does not prevent the person concerned from effectively challenging that decision before the court with jurisdiction by way of an appeal having suspensive effect, in accordance with Article 27 of the Dublin III Regulation. If it were to transpire that the requested Member State is not responsible on the basis of the criteria set by the regulation, the transfer decision could then be annulled.

38 In those circumstances, the Tribunal administratif de Lille (Administrative Court, Lille) decided to stay the proceedings and to refer the following question to the Court:

‘Do the provisions of Article 26 of the [Dublin III Regulation] preclude the competent authorities of the Member State which has submitted, to another Member State which it, by application of the criteria set out in [that] regulation, considers to be the State responsible, a request to take charge or take back a third-country national or a stateless person who has submitted an application for international protection in respect of which a final decision has not yet been taken, or another person referred to in Article 18(1)(c) or (d) of [that] regulation, from taking a transfer decision and notifying it to the person concerned before the requested State has accepted that request to take charge or to take the person back?’

Consideration of the question referred

39 By its question, the referring court asks, in essence, whether Article 26(1) of the Dublin III Regulation must be interpreted as precluding a Member State which has submitted, to another Member State which it considers responsible for the examination of an application for international protection pursuant to the criteria laid down in that regulation, a request to take charge or take back a person referred to in Article 18(1) of that regulation, from adopting a transfer decision and notifying it to that person before the requested Member State has given its explicit or implicit agreement to that request.

40 In accordance with the settled case-law of the Court, in interpreting a provision of EU law it is necessary to consider its wording, its origin, its context and the objectives pursued by the legislation of which it forms part (see, to that effect, judgments of 20 December 2017, *Acacia and D’Amato*, C-397/16 and C-435/16, EU:C:2017:992, paragraph 31, and of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 44 and the case-law cited).

41 In that regard, so far as concerns, first of all, the wording of Article 26(1) of the Dublin III Regulation, that provision states that, where the requested Member State accepts to take charge of or to take back an applicant or other person referred to in Article 18(1)(c) or (d), the requesting Member State is to notify the person concerned of the decision to transfer him to the Member State

responsible and, where applicable, of the decision not to examine his application for international protection.

42 It therefore follows from the actual wording of Article 26(1) of the Dublin III Regulation, and that, as the Advocate General has also stated in point 35 of his Opinion, in practically all of its language versions, that the notification of a transfer decision to the person concerned may take place only if, and therefore after, the requested Member State has agreed to the request to take charge or take back, or, where appropriate, after the expiry of the period within which the requested Member State must reply to that request, failure to act, in accordance with Article 22(7) and Article 25(2) of the Dublin III Regulation, being tantamount to acceptance of such a request.

43 The wording of Article 26(1) of the Dublin III Regulation thus makes it clear that the EU legislature established a specific procedural order between acceptance of the request to take charge or take back by the requested State and the notification of the transfer decision to the person concerned.

44 Next, as regards the legislative history of Article 26(1), it should be observed, as noted by the Advocate General in point 36 of his Opinion, that the proposal for a regulation of the European Parliament and of the Council 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 (COM/2008/0820 final), concerning the recasting of Regulation No 343/2003, which led to the adoption of the Dublin III Regulation, stated that it was necessary to further specify the procedure for notifying the transfer decision to the person concerned, in order to ensure a more effective right to seek a remedy against that decision.

45 As is apparent from the explanatory memorandum to that proposal for a regulation, such specifications were to focus, in particular, on the time, form and content of the notification of transfer decisions. However, Article 25(1) of that proposal, now Article 26(1) of the Dublin III Regulation, which contained those specifications, did not, in the course of the legislative procedure, undergo any substantial change in that regard.

46 Therefore, it follows from the actual wording of Article 26(1) of the Dublin III Regulation, read in the light of the history of that provision, that a transfer decision may be notified to the person concerned only after the requested Member State has, implicitly or explicitly, agreed to take charge of that person or to take him back (see, to that effect, judgment of 26 July 2017, *A.S.*, C-490/16, EU:C:2017:585, paragraph 33).

47 The general scheme of the Dublin III Regulation supports that interpretation.

48 In that regard, it should be noted that Article 26(1) of the Dublin III Regulation forms part of Chapter VI of that regulation, entitled ‘Procedures for taking charge and taking back’, which contains provisions specifying the successive stages of those procedures and a series of mandatory time limits which contribute to determining the Member State responsible for the examination of an application for international protection (see, to that effect, judgment of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 39 and the case-law cited).

49 Those take charge and take back procedures must necessarily be carried out in accordance with the rules laid down in, inter alia, Chapter VI of that regulation (see, to that effect, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 49 and the case-law cited).

50 Thus, it is apparent from Sections II and III of Chapter VI of the Dublin III Regulation, concerning procedures relating to requests for taking charge and taking back, first of all, that the requesting Member State may call upon another Member State, as appropriate, to take charge or take back the person concerned, in accordance with the provisions of Article 21(1), Article 23(1) and Article 24(1), respectively, of that regulation.

51 Secondly, it is for the requested Member State to carry out, in accordance with Article 22(1) or Article 25(1) of the Dublin III Regulation, as appropriate, the necessary checks to determine whether it is responsible for examining the application for international protection in accordance with the criteria set out in Chapter III of that regulation and, therefore, for giving a decision on the request to take charge or take back, within the time limits laid down in those provisions.

52 Therefore, it is only once the requested Member State has carried out those checks that it may give a decision on the request to take charge or take back and reply to the requesting Member State. In that regard, a favourable reply implies agreement in principle to the transfer of the person concerned, agreement which is generally followed by the enforcement of the transfer, in accordance with the provisions of Article 29 of the Dublin III Regulation (see, to that effect, judgment of 26 July 2017, *A.S.*, C-490/16, EU:C:2017:585, paragraph 50).

53 Article 26(1) of the Dublin III Regulation, which, together with Article 27 of that regulation, concerning remedies, features in Section IV, entitled 'Procedural safeguards', of Chapter VI of that regulation, is thus intended, by obliging the requesting Member State to notify the person concerned of the transfer decision, to strengthen the protection of that person's rights by ensuring that he is, in the case where the transfer is in principle accepted between the Member States involved in the procedure to take back or take charge, fully informed of all the reasons underpinning that decision so as to enable him, if appropriate, to challenge that decision before the court with jurisdiction and to request that its enforcement be suspended.

54 The general scheme of the Dublin III Regulation therefore also favours an interpretation of Article 26(1) of that regulation in accordance with which a transfer decision may be notified to the person concerned only after the requested Member State has agreed to take charge of that person or to take him back.

55 The same is true of the objective of the Dublin III Regulation, contrary to the view apparently taken by the European Commission.

56 In that regard, it should be recalled at the outset that the Dublin III Regulation has the objective, according to the Court's settled case-law, of establishing a clear and workable method based on objective and fair criteria both for the Member States and for the persons concerned for the purpose of determining rapidly the Member State responsible in order 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, while ensuring, in accordance with recital 19 of that regulation, that an effective remedy is established by that regulation against transfer decisions (see, to that effect, judgments of 7 June 2016, *Ghezelbash,* C-63/15, EU:C:2016:409, paragraph 42, and of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraphs 31 and 37 and the case-law cited).

57 Moreover, the Court has previously held that the EU legislature did not intend that the judicial protection enjoyed by applicants for international protection should be sacrificed to the requirement of expedition in processing applications for international protection (see, to that effect,

judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 57, and of 13 September 2017, *Khir Amayry*, C-60/16, EU:C:2017:675, paragraph 65).

58 Concerning effective judicial protection guaranteed by, inter alia, Article 47 of the Charter of Fundamental Rights of the European Union, it is apparent from Article 27(1) of the Dublin III Regulation that an applicant for international protection has 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. Such a remedy, the scope of which may not be interpreted restrictively, must cover (i) the examination of the application of that regulation, concerning both the implementation of the criteria set out in Chapter III thereof and compliance with the procedural safeguards provided for in, inter alia, Chapter VI and (ii) the examination of the legal and factual situation in the Member State to which the applicant for international protection is to be transferred (see, to that effect, judgments of 26 July 2017, *A.S.*, C-490/16, EU:C:2017:585, paragraphs 26 to 28; of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraphs 43, 47 and 48; and of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraphs 36 and 37).

59 In that regard, if it were to be accepted that a transfer decision may be notified to the person concerned before the requested Member State has replied to the request to take charge or take back, that could result in that person being required, in order to challenge that decision, to lodge an appeal within a period ending at the time when the requested Member State is supposed to provide its reply or even, as in the main proceedings, before that reply has been given since, in accordance with Article 27(2) of the Dublin III Regulation, it is for the Member States to determine the period within which the person concerned may exercise his right to an effective remedy, the only obligation imposed by that provision being that that period is reasonable.

60 In those circumstances, the person concerned is, where appropriate, required, preventatively, before the requested Member State has even responded to the request to take charge or take back the person concerned, to lodge, on the basis of Article 27(1) of the Dublin III Regulation, an appeal against the transfer decision or an application to review that decision. Moreover, the Court has previously held that, as a matter of principle, such an appeal or application for review can take effect only in a situation where the requested Member State has accepted that request (see, by analogy, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 60).

61 Furthermore, as the Advocate General also observed in points 46 to 48 of his Opinion, the scope of the right to an effective remedy under Article 27(1) of the Dublin III Regulation is liable to be restricted, since a transfer decision adopted and notified to the person concerned before the requested Member State has replied to the request to take charge or take back is based only on the evidence and indicia gathered by the requesting Member State and not on that from the requested Member State, such as the date of its reply to the request to take charge or take back or the wording of the reasons for accepting that request, where its reply is explicit.

62 It should be noted, as the Advocate General also observed in point 48 of his Opinion, that such information from the requested Member State is of particular importance in appeals and applications for review brought against a transfer decision taken as a result of a take charge procedure, since the requested Member State is required to check exhaustively whether it is responsible on the basis of the criteria laid down in the Dublin III Regulation and also to take account of information of which the requesting Member State is not necessarily aware (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 43).

63 It must also be noted that the requested Member State may find it necessary, even where there is a Eurodac hit, to refuse a request to take back or take charge where, inter alia, it considers that its

responsibility has ceased pursuant to Article 19 or the second subparagraph of Article 20(5) of the Dublin III Regulation, as Article 4 of the Implementing Regulation also confirms, the applicant having to have the opportunity to rely on such a matter in his appeal (see, in that regard, judgment of 7 June 2016, *Karim*, C-155/15, EU:C:2016:410, paragraphs 26 and 27).

64 Moreover, as regards the fact, referred to in paragraph 33 of the present judgment, that, in a situation such as that in the main proceedings, the enforcement of a transfer decision is suspended until the reply from the requested Member State, suffice it to note that no provision of the Dublin III Regulation provides for such suspension. The rules on the suspensive effect of appeals, laid down in Article 27(3) and (4) of that regulation, concern the possibility of suspending the transfer decision for a period from the date of the lodging of the appeal or application for review and, at the latest, following the outcome of that appeal or application for review, without the lodging of those proceedings necessarily implying the suspension of the transfer decision (see, to that effect, judgments of 13 September 2017, *Khir Amayry,* C-60/16, EU:C:2017:675, paragraphs 64 and 68, and of 25 January 2018, *Hasan*, C-360/16, EU:C:2018:35, paragraph 38).

65 Thus, to permit the notification of such a decision, within the meaning of Article 26(1) of the Dublin III Regulation, to take place before the reply from the requested Member State would, in legal systems which, in contrast to that at issue in the main proceedings, do not provide for suspension of such a decision before that reply, expose the person concerned to the risk of a transfer to that Member State even before that State had given its consent in principle.

66 Moreover, in so far as the Dublin III Regulation has the objective, as recalled in paragraph 56 of this judgment, of establishing a clear and workable method for determining the Member State responsible for examining an asylum application, it cannot be accepted that the interpretation of Article 26(1) of that regulation, by which the legislature has sought to strengthen the protection of the rights of the person concerned, may vary depending on the legislation of the Member States involved in the procedure for determining the Member State responsible.

67 Following the same logic, the fact that French law does not allow the person concerned to be placed in administrative detention before he is notified of the transfer decision, a difficulty which, as confirmed by the referring court, stems solely from the national law, cannot call into question the interpretation of Article 26(1) of the Dublin III Regulation given in paragraph 46 above. Besides, it is clear from Article 28(2) and (3) of that regulation that the Member States are authorised to detain persons concerned even before the request to take charge or take back is submitted to the requested Member State, when the conditions laid down by that article are met, the notification of the transfer decision not being a prerequisite for such a placement (see, to that effect, judgments of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 25, and of 13 September 2017, *Khir Amayry*, C-60/16, EU:C:2017:675, paragraphs 25 to 27, 30 and 31).

68 Thus, the objective of the Dublin III Regulation, far from casting doubt on the interpretation set out in paragraph 46 of this judgment, also supports that interpretation.

69 However, the referring court's questions do not relate only to the time at which notification of the transfer decision must take place but also to the time at which that decision must be adopted.

70 In that regard, it is true that the wording of Article 26(1) of the Dublin III Regulation refers to the notification of the transfer decision and not to its adoption. However, Article 5(2)(b) and 5(3) of that regulation, provisions which specify, respectively, the conditions under which the Member State undertaking the determination of the Member State responsible may dispense with the interview with the applicant and when the interview is to take place, state that such an interview, or

any other opportunity for the applicant to present the relevant information, must take place before the transfer decision is taken pursuant to Article 26(1).

71 Moreover, it should be noted that, according to the first subparagraph of Article 26(2), the transfer decision must contain information on the legal remedies available, including on the right to apply for suspensive effect, where applicable, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and must, if necessary, contain information on the place where, and the date on which, the person concerned is to appear, if that person is travelling to the Member State responsible by his or her own means.

72 Such information depends in principle, as the Advocate General has observed in point 44 of his Opinion, both on when the requested Member State replies to the request to take back or take charge and on the content of that reply, in accordance with the detailed rules set out in Article 6 of the Implementing Regulation, where it is explicit.

73 In any event, a transfer decision cannot be enforced against the person concerned before it has been notified to him, the time at which notification must take place being, as is apparent from the foregoing considerations, defined precisely in Article 26(1) of the Dublin III Regulation. It follows that the adoption of such a decision before the reply of the requested Member State, even if its notification takes place only after that reply, does not contribute to the objective of the rapid processing of applications for international protection or to that of ensuring effective legal protection of that person's rights, since the lodging of an appeal against a transfer decision necessarily postdates the notification of that decision (see, to that effect, judgment of 26 July 2017, *A.S.*, C-490/16, EU:C:2017:585, paragraph 54).

74 In those circumstances, Article 26(1) of the Dublin III Regulation also precludes the adoption of a transfer decision before the reply, whether explicit or implicit, from the requested Member State to the request to take charge or to take back.

75 It follows from all of the foregoing that Article 26(1) of the Dublin III Regulation must be interpreted as precluding a Member State that has submitted, to another Member State which it considers to be responsible for the examination of an application for international protection pursuant to the criteria laid down by that regulation, a request to take charge of or take back a person referred to in Article 18(1) of that regulation from adopting a transfer decision and notifying it to that person before the requested Member State has given its explicit or implicit agreement to that request.

Costs

76 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 (Second Chamber) hereby rules:

Article 26(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 must be interpreted as precluding a Member State that has submitted, to another Member State which it considers to be responsible for the examination of an application for international protection pursuant to

the criteria laid down by that regulation, a request to take charge of or take back a person referred to in Article 18(1) of that regulation from adopting a transfer decision and notifying it to that person before the requested Member State has given its explicit or implicit agreement to that request.

[Signatures]

* Language of the case: French.