ECLI:EU:C:2017:587

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

26 July 2017 (*)

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an application for international protection made in one of the Member States by a third-country national — Article 20 — Start of the determination process — Lodging an application for international protection — Report prepared by the authorities that reached the competent authorities — Article 21(1) — Time limits for making a take charge request — Transfer of responsibility to another Member State — Article 27 — Remedy — Scope of judicial review)

In Case C-670/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Minden (Administrative Court, Minden, Germany), made by decision of 22 December 2016, received at the Court on 29 December 2016, in the proceedings

Tsegezab Mengesteab

v

Bundesrepublik Deutschland,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič and L. Bay Larsen (Rapporteur), Presidents of Chambers, E. Levits, J.-C. Bonichot, A. Arabadjiev, C. Toader, M. Safjan, C.G. Fernlund, C. Vajda, S. Rodin, F. Biltgen and K. Jürimäe, Judges,

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

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

after considering the observations submitted on behalf of:

– Mr Mengesteab, by D. Ottembrino, Rechtsanwältin,

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

– the Hungarian Government, by M.Z. Fehér and M.M. Tátrai, acting as Agents,

– the United Kingdom Government, by C. Crane, acting as Agent, and by D. Blundell, Barrister,

– the European Commission, by M. Condou-Durande and G. Wils, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 17(1), Article 20(2), Article 21(1) and Article 22(7) 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 Tsegezab Mengesteab, an Eritrean national, and the Bundesrepublik Deutschland (Federal Republic of Germany), represented by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany), ('the Office'), concerning the latter's decision to reject the application for asylum which Mr Mengesteab had made, in which it declared that there were no grounds preventing his deportation, ordered his transfer to Italy and imposed a prohibition on his entry and residence of 6 months from the date of his removal.

Legal context

European Union law

R*egulation (EC) No 343/2003*

3 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) was repealed and replaced by the Dublin III Regulation.

4 Article 4(2) of Regulation No 343/2003 provided:

‘An application for asylum shall be deemed to have been lodged once a form submitted by the applicant for asylum or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.’

Regulation (EC) No 1560/2003

5 Paragraph 7 of Part I of List A in Annex II to Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 (OJ 2003 L 222, p. 3), as amended by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 (OJ 2014 L 39, p. 1), refers, amongst the evidence of illegal entry at an external frontier, to a ‘positive match by Eurodac from a comparison of the fingerprints of the applicant with fingerprints taken pursuant to Article 14 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 No 604/2013 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)].’

Directive 2013/33/EU

6 Article 6(1) to (4) 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, ‘the Procedures Directive’), provides:

‘1. 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. …

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4. Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.'

7 Article 31(3) of that directive provides:

'Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application.

Where an application is subject to the procedure laid down in [the Dublin III Regulation], the time limit of six months shall start to run from the moment the Member State responsible for its examination is determined in accordance with that Regulation, the applicant is on the territory of that Member State and has been taken in charge by the competent authority.

…'

Directive 2013/33/EU

8 Article 6(1) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96), states:

'Member States shall ensure that, within three days of the lodging of an application for international protection, the applicant is provided with a document issued in his or her own name certifying his or her status as an applicant or testifying that he or she is allowed to stay on the territory of the Member State while his or her application is pending or being examined.

…'

9 Article 14(2) of that directive provides:

'Access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor.

…'

10 Article 17(1) of that directive is worded as follows:

‘Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.’

Eurodac Regulation

11 Article 9(1) of Regulation No 603/2013 (‘the Eurodac Regulation’) provides:

‘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.

…’

12 Article 14(1) of the Eurodac Regulation provides:

‘Each Member State shall promptly take the fingerprints of all fingers of every third-country national or stateless person of at least 14 years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back or who remains physically on the territory of the Member States and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn him or her back.’

Dublin III Regulation

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

‘(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 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 of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying Regulation [No 343/2003], 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.'

14 The first subparagraph of Article 3(2) of that regulation provides:

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

15 Article 4(1) of that regulation provides:

'As soon as an application for international protection is lodged within the meaning of Article 20(2) in a Member State, its competent authorities shall inform the applicant of the application of this Regulation, and in particular of:

…

(b) the criteria for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, including the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible under this Regulation even if such responsibility is not based on those criteria;

(c) the personal interview pursuant to Article 5 and the possibility of submitting information regarding the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information;

…'

16 The first subparagraph of Article 6(4) of that regulation provides:

‘For the purpose of applying Article 8, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.’

17 Article 13(1) of the Dublin III Regulation reads as follows:

‘Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3), including the data referred to in [the Eurodac] Regulation, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum. This responsibility shall cease 12 months after the date on which the irregular border crossing took place.’

18 Article 17(1) of that regulation provides:

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

…’

19 Article 18(1) of that regulation states:

‘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.’

20 Article 20(1), (2) and (5) of that regulation provide:

‘1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for asylum is first lodged with a Member State.

2. An application for asylum shall be deemed to have been lodged once a form submitted by the applicant for asylum or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

…

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

…’

21 Article 21(1) of the Dublin III Regulation provides:

‘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.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 14 of [the Eurodac Regulation], the request shall be sent within two months of receiving that hit pursuant to Article 15(2) of that Regulation.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.’

22 Article 22 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 charge of an applicant within two months of receipt of the request.

…

3. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

(a) Proof

(i) this refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;

…

6. Where the requesting Member State has pleaded urgency …, the requested Member State shall make every effort to comply with the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give its reply after the time limit requested, but in any event within one month. …

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 provisions for proper arrangements for arrival.'

23 Article 27(1) of that regulation provides:

'The applicant ... shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.'

24 Article 28(3) of that regulation states:

'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. …

…

When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request …, the person shall no longer be detained. ...'

German law

25 Paragraph 5(1) of the Asylgesetz (Law on asylum, AsylG) in the version published on 2 September 2008 (BGBl. 2008 I, p. 1798, 'the AsylG'), provides:

'The [Office] shall decide on asylum applications. In accordance with this Law, [the Office] shall also be responsible for measures and decisions taken under the law relating to foreign nationals.'

26 Paragraph 14(1) of the AsylG provides:

'The asylum application shall be lodged at the local branch of [the Office] which is assigned to the reception centre responsible for admitting the foreign national.'

27 Paragraph 23 of the AsylG states:

'(1) A foreign national who has been admitted to the reception centre shall be required to appear in person immediately or on a date specified by the reception centre at the local branch of [the Office] for the purpose of submitting the asylum application.

(2) … The reception centre shall immediately notify the local branch of [the Office] assigned to it that the foreign national has been admitted to the reception centre …'

28 Paragraph 63a(1) of the AsylG states:

'A foreign national who is requesting asylum but has not yet submitted an asylum application shall immediately be issued a certificate of registration as an asylum seeker. This shall contain personal information, a photograph of the foreign national and the name of the reception centre to which the foreign national must proceed immediately for the purposes of submitting the asylum application.'

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

29 Mr Mengesteab requested asylum in Munich (Germany) with the Regierung von Oberbayern (Government of Upper Bavaria, Germany) on 14 September 2015. On the same day, an initial certificate of registration as an asylum seeker was issued by that authority. A second certificate of registration was issued to him on 8 October 2015 by the Zentrale Ausländerbehörde Bielefeld (Central Immigration Authority, Bielefeld, Germany).

30 Although the time at which information relating to the applicant was transmitted to the Office by one of those authorities was not established in the proceedings before the referring court, the latter was however able to establish that Mr Mengesteab had sent the Office his certificate of registration as an asylum seeker on several occasions and that the

Office had received, on or before 14 January 2016, the original of that certificate, a copy of it or the main information which it contained.

31 On 22 July 2016, Mr Mengesteab was heardby the Office and was able to lodge an official application for asylum.

32 As a search in the Eurodac system revealed that the applicant's fingerprints had been taken in Italy, the Office requested, on 19 August 2016, that the Italian authorities take charge of Mr Mengesteab on the basis of Article 21 of the Dublin III Regulation.

33 The Italian authorities have not replied to that request to take charge of him.

34 By a decision of 10 November 2016 the Office rejected the application for asylum which Mr Mengesteab had lodged, found that there were no grounds for prohibiting his removal, ordered his transfer to Italy and imposed a prohibition on his entry and residence for a period of six months from the date of removal.

35 Mr Mengesteab challenged that decision of the Office before the Verwaltungsgericht Minden (Administrative Court, Minden, Germany) and also applied for it to be suspended. That court granted the application for suspension on 22 December 2016.

36 In support of his action, the applicant in the main proceedings claims that responsibility for examining his application for international protection has been transferred to the Federal Republic of Germany pursuant to Article 21(1) of the Dublin III Regulation, as the take charge request had been made only after the expiry of the three-month period provided for in the first subparagraph of Article 21(1).

37 The referring court states that German law distinguishes the first request for asylum, which is generally made at an authority other than the Office, from lodging a formal application for asylum at the Office. A third-country national requesting asylum is referred to a reception centre where he receives a certificate of registration as an asylum seeker. That centre must then inform the Office without delay of the fact that the person concerned has requested asylum. However, the authorities responsible for that information have often failed to fulfill that obligation, particularly in the second half of 2015, due to the unusual increase in the number of asylum seekers who entered Germany during that period. In that context, many asylum seekers have had to wait several months to lodge their formal applications for asylum, without being able to expedite that procedure.

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

‘(1) May an asylum applicant claim a transfer of responsibility to the requesting Member State by reason of the expiry of the period for making the take charge request (third subparagraph of Article 21(1) of [the Dublin III Regulation])?

(2) If Question 1 is to be answered in the affirmative: may an asylum applicant claim a transfer of responsibility even if the requested Member State is still willing to take charge of him?

(3) If Question 2 is to be answered in the negative: can it be inferred from the express consent or the deemed consent (Article 22(7) of [the Dublin III Regulation]) of the requested Member State that the requested Member State is still willing to take charge of the asylum applicant?

(4) Can the two-month period provided for in the second subparagraph of Article 21(1) of [the Dublin III Regulation] end after the expiry of the three-month period provided for in the first subparagraph of Article 21(1) of [the Dublin III Regulation] if the requesting Member State allows more than one month to pass after the beginning of the three-month period before it makes a request to the Eurodac database?

(5) Is an application for international protection deemed to have been lodged for the purposes of Article 20(2) of [the Dublin III Regulation] when a certificate of registration as an asylum seeker is first issued or only when a formal asylum application is recorded?

(a) Is the certificate of registration as an asylum seeker a form or a report within the meaning of Article 20(2) of [the Dublin III Regulation]?

(b) Is the competent authority within the meaning of Article 20(2) of [the Dublin III Regulation] the authority responsible for receiving the form or for preparing the report or the authority responsible for the decision on the asylum application?

(c) Has a report prepared by the authorities reached the competent authority even if that authority was informed of the main content of the form or the report, or must the original or a copy of the report be communicated to it for that purpose?

(6) Can delays between the first request for asylum or the first issue of a certificate of registration as an asylum seeker and the submission of a take charge request lead to a transfer of responsibility to the requesting Member State by analogous application of the third subparagraph of Article 21(1) of [the Dublin III Regulation] or require the requesting Member State to exercise its right to assume responsibility pursuant to the first subparagraph of Article 17(1) of [the Dublin III Regulation]?

(7) If Question 6 is to be answered in the affirmative in respect of either alternative: from what time can there be considered to be an unreasonable delay in submitting a take charge request?

(8) Does a take charge request in which the requesting Member State indicates only the date of entry into the requesting Member State and the date of submission of the formal asylum application, but not also the date of the first request for asylum or the date of first issue of a certificate of registration as an asylum seeker, comply with the time limit provided for in the first subparagraph of Article 21(1) of [the Dublin III Regulation], or is such a request "ineffective?"'

Procedure before the Court

39 The referring court requested the application of the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice.

40 By order of 15 February 2011, *Mengesteab* (C-670/16, not published, EU:C:2017:120), the President of the Court granted that request.

Consideration of the questions referred

The first and second questions

41 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 27(1) of the Dublin III Regulation must be interpreted as meaning that an applicant for international protection may rely, in the context of an action brought against a decision to transfer him, on the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant.

42 Article 27(1) of the Dublin III Regulation states that the applicant for international protection is to have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

43 The scope of the remedy available to an applicant for international protection against a transfer decision is made clear in recital 19 of that regulation, which states that, in order to ensure compliance with international law, the effective remedy introduced by that regulation in respect of transfer decisions should cover (i) the examination of the application of that regulation and (ii) the examination of the legal and factual situation in the Member State to which the asylum seeker is to be transferred (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraphs 38 and 39).

44 That information is supported by the general thrust of the developments that have taken place in the system for determining the Member State responsible for examining an asylum application made in one of the Member States ('the Dublin system') as a result of the adoption of the Dublin III Regulation and by the objectives of the regulation (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 45).

45 As regards that development, it should be borne in mind that the EU legislature did not confine itself, in that regulation, to introducing organisational rules governing relations between Member States for the purpose of determining the Member State responsible, but decided to involve asylum seekers in that process by obliging Member States to inform them of the criteria for determining responsibility and to provide them with an opportunity to submit information relevant to the correct interpretation of those criteria, and by conferring on asylum seekers the right to an effective remedy in respect of any transfer decision that may be taken at the conclusion of that process (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraphs 47 to 51).

46 As regards the objectives of that regulation, it should be stated, inter alia, that, according to its recital 9, that regulation, while confirming the principles underlying Regulation No 343/2003, is intended to make the necessary improvements, in the light of experience, not only to the effectiveness of the Dublin system but also to the protection afforded applicants under that system, to be achieved, inter alia, by the effective and complete judicial protection enjoyed by asylum seekers (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 52).

47 A restrictive interpretation of the scope of the remedy provided for in Article 27(1) of the Dublin III Regulation might thwart the attainment of that objective (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 53).

48 It follows from the foregoing that that provision must be interpreted as ensuring that the applicant for international protection has effective judicial protection by, inter alia, guaranteeing him the opportunity of bringing an action against a transfer decision made in respect of him, which may concern the examination of the application of that regulation, including respect of the procedural guarantees laid down in that regulation (see, to that effect, judgment of 7 June 2016, *Karim*, C-155/15, EU:C:2016:410, paragraph 22).

49 In that regard, although the application of the Dublin III Regulation is based essentially on the conduct of a process for determining the Member State responsible as designated by the criteria listed in Chapter III of that regulation (judgments of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 41, and of 7 June 2016, *Karim*, C-155/15, EU:C:2016:410, paragraph 23), it must be stated that that process is an aspect of the take charge and take back procedures which must necessarily be carried out in accordance with the rules laid down, inter alia, in Chapter VI of that regulation.

50 As the Advocate General stated in point 72 of her Opinion, those procedures must, in particular, be carried out in compliance with a series of specified time limits.

51 Accordingly, Article 21(1) of the Dublin III Regulation provides that the take charge request must be made as quickly as possible and in any event within three months of the date on which the application for international protection was lodged. Notwithstanding that first deadline, in the case of a Eurodac hit with data registered under

Article 14 of the Eurodac Regulation, that request must be made within two months of receipt of that hit.

52 In that regard, it should be noted that the EU legislature defined the effects of the expiry of those periods by specifying, in the third subparagraph of Article 21(1) of the Dublin III Regulation, that where that request is not made within those periods, responsibility for examining the application for international protection is to lie with the Member State in which the application was lodged.

53 It follows that, while the provisions of Article 21(1) of that regulation are intended to provide a framework for the take charge procedure, they also contribute, in the same way as the criteria set out in Chapter III of that regulation, to determining the responsible Member State, within the meaning of that regulation. Therefore, a decision to transfer to a Member State other than the one with which the application for international protection was lodged cannot validly be adopted once the periods laid down in those provisions have expired.

54 Those provisions thus make a decisive contribution to achieving the objective of rapidly processing applications for international protection, referred to in recital 5 of the Dublin III Regulation, by ensuring, in the event of a delay in the conduct of the take charge procedure, that the examination of the application for international protection is carried out in the Member State in which the application was lodged, so as not to further delay that examination by the adoption and implementation of a transfer decision.

55 In those circumstances, in order to satisfy itself that the contested transfer decision was adopted following a proper application of the take charge procedure laid down in that regulation, the court dealing with an action challenging a transfer decision must be able to examine the claims made by an asylum applicant who invokes an infringement of the provisions set out in Article 21(1) of that regulation (see, by analogy, judgment of 7 June 2016, *Karim*, C-155/15, EU:C:2016:410, paragraph 26).

56 That conclusion cannot be called into question by the argument, relied on by the United Kingdom Government and by the Commission, that the procedural nature of that rule means that it cannot be relied on in the context of the remedy laid down in Article 27(1) of that regulation.

57 In addition to what has already been stated in paragraph 53 of the present judgment, it must be stated that Article 27 of the Dublin III Regulation makes no distinction between the rules which can be relied on in the context of the remedy for which it provides, and that recital 19 of that regulation refers, in general terms, to review the application of that regulation.

58 Moreover, the restriction of the scope of the judicial protection afforded by the Dublin III Regulation relied on in this respect would not be consistent with the objective, set out in recital 9 of that regulation, of strengthening the protection for applicants for international protection, since that strengthened protection is manifested principally by

the grant, in essence, of procedural safeguards for those applicants (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraphs 47 to 51).

59 The fact, mentioned by the referring court in its second question, that the requested Member State would be willing to take charge of the person concerned despite the expiry of the periods laid down in Article 21(1) of that regulation, cannot be decisive.

60 Indeed, as the remedy provided for in Article 27(1) of the Dublin III Regulation can be applied, as a matter of principle, only in a situation where the requested Member State has accepted, either explicitly, in accordance with Article 22(1) of that regulation, or implicitly, under Article 22(7) thereof, that fact cannot, in general, lead to a limitation of the scope of judicial review provided for in Article 27(1) (see, to that effect, judgment delivered today, *A.S.*, C-490/16, paragraphs 33 and 34).

61 Moreover, as regards more specifically Article 21(1) of that regulation, it is necessary to point out that its third subparagraph provides, in the case of the expiry of the periods laid down in the two preceding subparagraphs, for a full transfer of responsibility to the Member State in which the application for international protection was lodged, without making that transfer subject to any reaction by the requested Member State.

62 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 27(1) of the Dublin III Regulation, read in the light of recital 19 thereof, must be interpreted as meaning that an applicant for international protection may rely, in the context of an action brought against a decision to transfer him, on the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant.

The fourth question

63 By its fourth question, the referring court asks, in essence, whether Article 21(1) of the Dublin III Regulation must be interpreted as meaning that a take charge request may validly be made more than three months after the application for international protection has been lodged, if that request is made within two months of receipt of a Eurodac hit within the meaning of that article.

64 It must be borne in mind that, under the first subparagraph of Article 21(1) of the Dublin III Regulation, the take charge request must be made as quickly as possible and in any event within three months of the date on which the application for international protection was lodged.

65 The second subparagraph of Article 21(1) of the Dublin III Regulation provides that, notwithstanding the first subparagraph of Article 21(1) of that regulation, in the case of a Eurodac hit with data recorded pursuant to Article 14 of the Eurodac Regulation, that request must be made within two months of receiving that hit.

66 The third subparagraph of Article 21(1) of the Dublin III Regulation states that, ‘where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.’

67 It is clear, therefore, from the very wording of the latter provision that the request must absolutely be made within the periods laid down in Article 21(1) of that regulation, which means that a take charge request cannot, in any event, be made more than three months after an application for international protection is lodged, and the receipt of Eurodac hit does not permit that period to be exceeded.

68 That finding is borne out by the context of Article 21(1) of that regulation and by the objectives of that regulation, which must be taken into account in order to interpret that provision.

69 The specific period laid down in the second subparagraph of Article 21(1) of the Dublin III Regulation is applicable only in the event of receipt of a Eurodac hit with data recorded pursuant to Article 14 of the Eurodac Regulation, namely with fingerprint data recorded in connection with the illegal entry at an external frontier.

70 It is apparent from point 7 of Part I of List A in Annex II to Regulation No 1560/2003 that such a hit constitutes evidence of illegal entry at an external frontier within the meaning of the criterion laid down in Article 13(1) of the Dublin III Regulation. Accordingly, pursuant to Article 22(3)(a)(i) of that regulation, that hit constitutes formal proof which determines responsibility under that criterion, as long as it is not refuted by proof to the contrary.

71 Accordingly, the receipt of the Eurodac hit referred to in the second subparagraph of Article 21(1) of that regulation is such as to simplify the process of determining the responsible Member State in comparison with cases in which such a result is not received.

72 That situation is therefore such as to justify the application, where it arises, of a period shorter than the three-month period referred to in the first subparagraph of Article 21(1) of that regulation and not that of a supplementary period, which is added to that period.

73 Moreover, the interpretation of Article 21(1) of the Dublin III Regulation adopted in paragraph 67 of the present judgment is consistent with the objective of the rapid processing of asylum applications referred to in recital 5 of that regulation, in so far as it guarantees that a take charge request cannot validly be made more than three months after the application for international protection has been lodged.

74 Consequently, the answer to the fourth question is that Article 21(1) of the Dublin III Regulation must be interpreted as meaning that a take charge request cannot validly be

made more than three months after the application for international protection has been lodged, even if that request is made within two months of receipt of a Eurodac hit within the meaning of that article.

The fifth question

75 It should be noted at the outset that, according to the order for reference, the original of the certificate of registration as an asylum seeker, a copy of it or the main information contained therein reached the Office, which is the authority responsible for implementing, in Germany, the obligations arising from the Dublin III Regulation, more than three months before the take charge request was made, whereas the lodging, by the third-country national concerned, of a formal asylum application occurred less than three months before that request was made.

76 In those circumstances, it must be considered that, by its fifth question, the referring court asks, in essence, whether Article 20(2) of that regulation must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority, or, on the contrary, if such an application is deemed to have been lodged only when a formal asylum application is lodged.

77 Article 20(2) of the Dublin III Regulation provides that an application for international protection is to be deemed to have been lodged once a form submitted by the applicant or a report prepared by the authorities has reached the competent authorities of the Member State concerned.

78 Since a written document, prepared by the authorities, cannot be regarded as a form submitted by the applicant, it is therefore necessary, in order to answer the fifth question, to determine whether a document such as that at issue in the case in the main proceedings may constitute a 'report prepared by the authorities' within the meaning of that article.

79 In that regard, it should be noted that, although the wording used by the EU legislature clearly refers to a written document, prepared by the authorities, it does not provide any details as to the procedure which should be followed to draw up that document or as to the information that it should include.

80 Admittedly, the use of the word '*procès-verbal*' or an equivalent term in the German, Spanish, French, Italian, Dutch or Romanian versions might suggest that that document must necessarily have a particular form.

81 However, the word used in the other language versions, such as the Danish, English, Croatian, Lithuanian or Swedish versions, to designate the document prepared

by the authorities, referred to in Article 20(2) of the Dublin III Regulation, does not contain a clear indication as to the form which that document should take.

82 According to settled case-law, provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all the languages of the European Union (see, to that effect, judgment of 8 December 2005, *Jyske Finans*, C-280/04, EU:C:2005:753, paragraph 31).

83 Moreover, in order to interpret the first sentence of Article 20(2) of that regulation, it is also necessary to take account of its context and of the objectives of that regulation.

84 In that regard, it should, in the first place, be pointed out that the second sentence of Article 20(2) states that, where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible, which suggests (i) that the preparation of that report is in essence a formality intended to record the intention of a third-country national to request international protection and (ii) that the creation of that document must not be deferred.

85 In the second place, it is clear from Article 20(1) of that regulation that the process of determining the Member State responsible is to start as soon as an application for asylum is first lodged with a Member State.

86 The mechanisms set up by the Dublin III Regulation to collect the necessary information in the context of that process are therefore intended to be applied after an application for international protection has been lodged.

87 Article 4(1) of that regulation indeed expressly provides that it is after such an application has been lodged that the applicant must be informed, in particular, of the criteria for determining the Member State responsible, the organisation of a personal interview and the possibility of submitting information to the competent authorities. Similarly, it follows from Article 6(4) of that regulation that appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of the Member States — with a view inter alia to applying the criteria to determine the Member State responsible if the applicant for international protection is an unaccompanied minor, set out in Article 8 of that regulation — must be taken after an application for international protection is lodged.

88 It follows that, in order to be able effectively to start the process of determining the responsible Member State, the competent authority needs to be informed, with certainty, of the fact that a third-country national has requested international protection, and it is not necessary for the written document prepared for that purpose to have a precisely defined form or for it to include additional information relevant to the application of the criteria laid down by the Dublin III Regulation or, a fortiori, to the examination of the application for international protection. Nor is it necessary, at that stage of the procedure, for a personal interview already to have been organised.

89 The examination of the preparatory material for Regulation No 343/2003, of which Article 4(2) was re-enacted, without material amendment, in Article 20(2) of the Dublin III Regulation, supports that assessment.

90 It is clear from the explanatory memorandum of the Commission proposal [COM(2001) 447 final] which led to the adoption of Regulation No 343/2003, first, that an asylum application must be considered to have actually been lodged as soon as the asylum seeker's intention has been confirmed with a competent authority and, second, that Article 4(2) of that regulation is the repetition of Article 2 of Decision No 1/97 of 9 September 1997 of the Committee set up by Article 18 of the Dublin Convention of 15 June 1990, concerning provisions for the implementation of the Convention (OJ 1997 L 281, p. 1). Article 2(1) stated that an application for asylum is regarded as having been lodged 'from the moment the authorities of the Member State concerned have something in writing to that effect: either a form submitted by the applicant or an official statement drawn up by the authorities'.

91 In the third place, the effectiveness of certain important guarantees granted to applicants for international protection would be restricted if the receipt of a written document, such as that at issue in the case in the main proceedings, was not sufficient to demonstrate that an application for international protection had been lodged.

92 To adopt such an interpretation would accordingly not only delay the implementation of measures intended to bring together an isolated minor and members of his family, but also extend the detention period of an applicant for international protection, in so far as the maximum detention period pending the submission of a take charge request is calculated, in accordance with Article 28(3) of the Dublin III Regulation, from the lodging of an application for international protection.

93 In the fourth place, the Dublin III Regulation assigns a specific role to the first Member State in which an application for international protection is lodged. Thus, in accordance with Article 20(5) of that regulation, that Member State is, in principle, obliged to take back an applicant who is present in another Member State as long as the process of determining the Member State responsible has not been completed. Moreover, it follows from Article 3(2) of that regulation that where no Member State responsible can be designated on the basis of the criteria listed in that regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

94 In order, in particular, to ensure the effective application of those provisions, Article 9(1) of the Eurodac Regulation provides that the fingerprints of every asylum seeker must, in principle, be transmitted to the Eurodac system no later than 72 hours after the lodging of the application for international protection, as defined by Article 20(2) of the Dublin III Regulation.

95 In those circumstances, to consider that a document such as that at issue in the case in the main proceedings does not constitute a 'report', within the meaning of that

provision, would, in practice, allow third-country nationals to leave the Member State in which they have requested international protection and to re-request that protection in another Member State, but they could not be transferred, for that reason, to the first Member State and it would not be possible to trace their initial request by using the Eurodac system. Such a situation could seriously affect the functioning of the Dublin system by calling into question the special status which the Dublin III Regulation grants to the first Member State in which an application for international protection is lodged.

96 In the fifth place, to consider that a document such as that at issue in the main proceedings constitutes a 'report', within the meaning of Article 20(2) of the Dublin III Regulation, is consistent with the objective of rapidly processing applications for international protection, referred to in recital 5 of that regulation, since such an interpretation ensures that the process of determining the Member State responsible begins as soon as possible, without having to be delayed as a result of accomplishing a formality which is not necessary for carrying out that process. In contrast, that objective would be weakened if the starting date for that process depended solely on a choice made by the competent authority, such as the grant of an appointment for a personal interview.

97 In the light of all those factors, a written document such as that at issue in the case in the main proceedings, prepared by a public authority and certifying that a third-country national has requested international protection, must be considered to be a 'report' within the meaning of Article 20(2) of that regulation.

98 In the light of the role of that provision in the system established by that regulation and its purpose, as emerge from the foregoing considerations, the transmission of the main information contained in such a document to the competent authority must be considered to be a transmission to that authority of the original or a copy of that document. Such transmission is therefore sufficient to establish that an application for international protection is deemed to have been lodged.

99 The argument relied on by the German Government and United Kingdom Government and by the Commission, that account must be taken primarily of the distinction between 'making' and 'lodging' an application for international protection arising from Article 6 of the 'Procedures' Directive, cannot call those conclusions into question.

100 The Court notes, without needing to specify, in the present case, the scope of that distinction, first of all, that the examination of the terms used, in that respect, in the various measures falling within the Common European Asylum System does not appear to be conclusive. Indeed, Article 18(1) of the Dublin III Regulation refers, in several language versions, in an undifferentiated way, to lodging and making an application for international protection, whereas in other language versions, it refers exclusively either to lodging or making such an application. Similarly, Directive 2013/33 uses those terms in a variable manner in the various language versions of Article 6(1), Article 14(2) and Article 17(1).

101 Next, although Article 6(4) of the Procedures Directive and Article 20(2) of the Dublin III Regulation show considerable similarities, the fact remains that those provisions differ, in particular in that the first of them envisages the taking into account of a document prepared by the authorities only if it is provided for by national law. Furthermore, Article 6(4) of the Procedures Directive is an exception to the rule laid down in Article 6(3) of that directive, since that rule has no equivalent in the Dublin III Regulation.

102 Finally, Article 6(4) of the Procedures Directive and Article 20(2) of the Dublin III Regulation are part of two different procedures, which have their own requirements and are subject, in particular, in terms of time limits, to distinct schemes, as provided for in Article 31(3) of the Procedures Directive.

103 In the light of all of the foregoing considerations, the answer to the fifth question is that Article 20(2) of the Dublin III Regulation must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority.

The third and sixth to eighth pleas in law

104 Regard being had to the answers given to the other questions, there is no need to reply to the third and sixth to eighth questions.

Costs

105 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 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 thereof,** must be interpreted as meaning that an applicant for international protection may rely, in the context of an action brought against a decision to transfer him, on the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant.

2. **Article 21(1) of Regulation No 604/2013 must be interpreted as meaning that a take charge request cannot validly be made more than three months after the application for international protection has been lodged, even if that request is made within two months of receipt of a Eurodac hit within the meaning of that article.**

3. Article 20(2) of Regulation No 604/2013 must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority.

[Signatures]

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* Language of the case: German.