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ECLI:EU:C:2023:4

JUDGMENT OF THE COURT (First Chamber)

12 January 2023 (\*)

(References for a preliminary ruling – Regulation (EU) No 604/2013 – Determining the Member State responsible for examining an application for international protection – Lodging of multiple applications for international protection in three Member States – Article 29 – Time limit for transfer – Expiry – Transfer of responsibility for examining the application – Article 27 – Remedy – Scope of judicial review – Possibility for the applicant to rely on the transfer of responsibility for examining the application)

In Joined Cases C-323/21, C-324/21 and C-325/21,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decisions of 19 May 2021, received at the Court on 25 May 2021, in the proceedings

**Staatssecretaris van Justitie en Veiligheid**

v

**B** (C-323/21),

**F** (C-324/21),

and

**K**

v

**Staatssecretaris van Justitie en Veiligheid** (C-325/21),

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: J. Richard de la Tour,

Registrar: V. Giacobbo, Administrator,

having regard to the written procedure and further to the hearing on 5 May 2022,

after considering the observations submitted on behalf of:

- B, by P.J.J.A. Hendriks, advocaat,
- the Netherlands Government, by M.K. Bulterman, M.H.S. Gijzen and A. Hanje, acting as Agents,
- the French Government, by A.-L. Desjonquères and J. Illouz, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by D. G. Pintus, avvocato dello Stato,
- the Swiss Government, by S. Lauper and N. Marville-Dosen, acting as Agents,
- the European Commission, by C. Cattabriga and S. Noë, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2022,

gives the following

## **Judgment**

1 These requests for a preliminary ruling concern the interpretation of Article 27(1) and Article 29(2) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31) ('the Dublin III Regulation').

2 The requests for a preliminary ruling were made in proceedings (i) between the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands) ('the State Secretary') and, respectively, B and F, who are third-country nationals, and (ii) between K, who is also a third-country national, and the State Secretary, concerning decisions adopted by the State Secretary seeking, first, to reject without examination the applications for international protection lodged by B and K and to transfer them to Italy and, second, to hold F in detention for the purpose of removal.

## **Legal context**

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

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

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

...

(19) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.’

4 Article 3(1) of that regulation provides:

‘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.’

5 Article 18(1) of that regulation provides:

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

...

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

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

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

6 Article 20(5) of that regulation states the following:

‘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.’

7 Article 23(1) to (3) of the Dublin III Regulation provides as follows:

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

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

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

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

8 Under Article 24(1) of that regulation:

‘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.’

9 Article 27(1) of that regulation is worded as follows:

‘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.’

10 Article 29(1) and (2) of that regulation provides:

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

...

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.'

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

#### *Case C-323/21*

11 On 3 July 2017, B lodged an application for international protection in Germany. The German authorities made a request to the Italian authorities to take back B on the ground that he had previously applied for that protection in Italy. On 4 October 2017, the Italian authorities accepted that request, which set in motion a period of six months to transfer B to Italy. That period was subsequently extended until 4 April 2019 because B had absconded.

12 On 17 February 2018, B lodged an application for international protection in the Netherlands. On 17 March 2018, the State Secretary made a request to the Italian authorities to take back B. On 1 April 2018, the Italian authorities accepted that request. By letter of 29 June 2018, the State Secretary informed those authorities that B had absconded, which, according to the State Secretary, necessitated an extension of the transfer time limit until 1 October 2019.

13 On 9 July 2018, B lodged a second application for international protection in Germany. On 14 September 2018, the German authorities adopted a decision under the Dublin III Regulation, which was not appealed.

14 On 27 December 2018, B lodged a second application for international protection in the Netherlands. By decision of 8 March 2019, the State Secretary rejected that application without examining it, on the ground that the Italian Republic remained the Member State responsible for examining it.

15 On 29 April 2019, B was transferred to Italy.

16 B brought an action against the State Secretary's decision of 8 March 2019 before the competent court. By judgment of 12 June 2019, that court upheld the action and annulled that decision on the ground that the Federal Republic of Germany had become, on 4 April 2019, the Member State responsible by reason of the expiry of the transfer time limit laid down in Article 29 of the Dublin III Regulation.

17 The State Secretary brought an appeal against that judgment before the Raad van State (Council of State, Netherlands), which is the referring court. In support of that appeal, the State Secretary argued, *inter alia*, first, that the transfer time limit should be calculated in the light of the relationship between the Kingdom of the Netherlands and the Italian Republic and, second, that a new transfer time limit had begun to run in relation to the Federal Republic of Germany on the date when B had lodged an application for international protection in the Netherlands.

18 The referring court notes that it is common ground that the Italian Republic was the Member State responsible on the date on which B's second application for international protection was lodged in the Netherlands, that is to say, 27 December 2018. It states, on the other hand, that the parties to the main proceedings disagree as to the possible expiry of the transfer time limit, on

4 April 2019, at the end of a period of 18 months, which elapsed once the Italian Republic accepted the first take back request, that is to say, the take back request made by the German authorities.

19 In the present case, there were at the same time two ‘valid agreements’ for take back requests with two different transfer time limits, which means that it is necessary to specify the relationship between those two periods. To that end, it is necessary to determine whether the first Member State which made a take back request, namely the Federal Republic of Germany, must still be regarded as the ‘requesting Member State’, within the meaning of Article 29(2) of the Dublin III Regulation, or whether that status must be reserved for the last Member State which made such a request, namely the Kingdom of the Netherlands. If the second interpretation is adopted, the referring court asks whether the last Member State is bound in any way by the transfer time limit imposed on the first Member State.

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

‘(1) (a) Must the term “requesting Member State” within the meaning of Article 29(2) of [the Dublin III Regulation] be interpreted as referring to the Member State (in this case, the third Member State, namely the Netherlands) which was the last to submit a take back or take charge request to another Member State?’

(b) If the answer is in the negative: does the fact that a claim agreement has previously been concluded between two Member States (in this case, Germany and Italy) still have consequences for the legal obligations of the third Member State (in this case, the Netherlands) under the Dublin [III] Regulation towards the foreign national or the Member States concerned by that earlier claim agreement, and if so, what are those consequences?’

(2) If Question 1 must be answered in the affirmative, must Article 27(1) of [the Dublin III Regulation], read in the light of recital 19 of that regulation, be interpreted as precluding an applicant for international protection from successfully arguing, in the context of an appeal against a transfer decision, that that transfer cannot proceed because the time limit for a previously agreed transfer between two Member States (in this case, Germany and Italy) has expired?’

### *Case C-324/21*

21 On 24 November 2017, F lodged an application for international protection in the Netherlands. The State Secretary made a request to the Italian authorities to take back F on the ground that he had previously applied for that protection in Italy. On 19 December 2017, the Italian authorities accepted that request, which set in motion a period of six months to transfer F to Italy. By letter of 12 April 2018, the State Secretary informed those authorities that F had absconded, which necessitated an extension of the transfer time limit until 19 June 2019.

22 On 29 March 2018, F lodged an application for international protection in Germany. The referring court is not aware of any action that may have been taken following that request.

23 On 30 September 2018, F lodged a second application for international protection in the Netherlands. By decision of 31 January 2019, the State Secretary rejected that application without examining it, on the ground that the Italian Republic remained the Member State responsible for examining it.

24 After leaving the asylum seekers' centre where he was accommodated in the Netherlands, F was arrested and then held in detention as a result of a decision of the State Secretary of 1 July 2019, with a view to his transfer to Italy.

25 F brought an action against that decision before the competent court. By judgment of 16 July 2019, that court upheld the action and annulled that decision on the ground that, on 19 June 2019, the Kingdom of the Netherlands had become the Member State responsible by reason of the expiry of the time limit for transferring F to Italy.

26 The State Secretary brought an appeal against that judgment before the Raad van State (Council of State), which is the referring court. In support of that appeal, the State Secretary argued, *inter alia*, that the Kingdom of the Netherlands had a new time limit within which to transfer F to Italy, which had started to run from the date on which F lodged an application for international protection in Germany. Consequently, it was submitted that the Italian Republic remained the Member State responsible.

27 The referring court notes that it is common ground that the Italian Republic should be regarded as the Member State responsible at least until 19 June 2019.

28 However, in the light of the arguments put forward by the State Secretary, it questions the relevance of the fact that, before the expiry of the time limit for transferring F to Italy, F submitted a new application for international protection in another Member State.

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

'Must Article 29 of [the Dublin III Regulation] be interpreted as meaning that a current transfer time limit, as referred to in Article 29(1) and (2), restarts at the point at which the foreign national, having obstructed the transfer by a Member State by absconding, lodges a fresh application for international protection in another (in this case, a third) Member State?'

### *Case C-325/21*

30 On 6 September 2018, K lodged an application for international protection in France. The French authorities submitted a request to the Austrian authorities to take back K on the ground that he had previously applied for that protection in Austria. On 4 October 2018, the Austrian authorities accepted that request, which set in motion a period of six months to transfer K to Austria. K subsequently absconded and was not transferred to Austria.

31 On 27 March 2019, K lodged an application for international protection in the Netherlands. On 3 May 2019, the State Secretary submitted to the Austrian authorities a take back request in respect of K. On 10 May 2019, those authorities rejected that request on the ground that the French Republic, having failed to inform the Republic of Austria that K's transfer could not take place within six months, had been the Member State responsible for examining K's application since 4 April 2019, the date when the time limit for K's transfer to Austria expired.

32 On 20 May 2019, the State Secretary made a request to the French authorities to take back K. Those authorities rejected that request on the ground that the six-month time limit for transfer to Austria had not yet expired on the date on which K lodged an application for international protection in the Netherlands.

33 On 31 May 2019, the State Secretary asked both the Austrian authorities and the French authorities to reconsider their replies to the take back requests which had been sent to them respectively. In the request made to the Austrian authorities, it was claimed that a new time limit for the transfer between the French Republic and the Republic of Austria had begun to run from when K lodged an application for international protection in the Netherlands and that, consequently, the Republic of Austria was the Member State responsible for examining K's application for international protection. On 3 June 2019, the Austrian authorities agreed to take back K.

34 By decision of 24 July 2019, the State Secretary rejected the application for international protection lodged by K without examining it.

35 K brought an action against that decision before the competent court. By judgment of 17 October 2019, that court dismissed the action on the ground that the State Secretary had been fully entitled to find that the Republic of Austria was the Member State responsible for examining K's application for international protection.

36 K brought an appeal against that judgment before the Raad van State (Council of State), which is the referring court. In support of that appeal, he argued that the lodging of an application for international protection in a third Member State could not preclude the expiry of the time limit for a proposed transfer between two other Member States.

37 The referring court notes that it is common ground that the French authorities did not inform the Austrian authorities that K had absconded or that they could not transfer K within six months. Consequently, in view of the expiry of that time limit, the Republic of Austria could no longer be regarded as the Member State responsible as from 4 April 2019.

38 However, it questions the relevance of the fact that, before the expiry of the transfer time limit, the person concerned lodged a new application for international protection in another Member State.

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

‘(1) Must Article 29 of [the Dublin III Regulation] be interpreted as meaning that a current transfer time limit, as referred to in Article 29(1) and (2), restarts at the point at which the foreign national, after having obstructed the transfer by a Member State by absconding, lodges a fresh application for international protection in another (in this case, a third) Member State?’

(2) If Question 1 must be answered in the negative, must Article 27(1) of [the Dublin III Regulation], read in the light of recital 19 of that regulation, be interpreted as precluding an applicant for international protection from successfully arguing, in the context of an appeal against a transfer decision, that that transfer cannot proceed because the time limit for a previously agreed transfer between two Member States (in this case, [the French Republic] and [the Republic of] Austria) has expired, with the result that the time limit within which the Netherlands can effect the transfer has expired?’

### **Consideration of the questions referred**

#### ***The first question in Cases C-323/21 and C-325/21 and the single question in Case C-324/21***



40 By its first question in Cases C-323/21 and C-325/21, and by its single question in Case C-324/21, the referring court asks, in essence, whether Article 29 of the Dublin III Regulation must be interpreted as meaning that, where the time limit for the transfer of a third-country national between a requested Member State and a first requesting Member State has started to run, responsibility for examining the application for international protection lodged by that person is transferred to that requesting Member State by reason of the expiry of that time limit, even though that person, in the meantime, lodged a new application for international protection in a third Member State, which led to the acceptance by the requested Member State of a take back request made by that third Member State. By its first question in Case C-323/21, the referring court also asks the Court about the possible consequences of the expiry of that time limit for the third Member State.

41 As a preliminary point, it should be noted that, in accordance with Article 3(1) of the Dublin III Regulation, any application for international protection made by a third-country national or a stateless person on the territory of any Member State is to be examined by a single Member State.

42 Accordingly, where an applicant for international protection is on the territory of a Member State other than the one which is required to examine his or her application, the procedures laid down by the Dublin III Regulation are intended, *inter alia*, to enable that person to be transferred to the latter Member State.

43 In that regard, the first subparagraph of Article 29(1) of the Dublin III Regulation provides that the transfer of the person concerned to the Member State responsible is to be carried out as soon as practically possible, and at the latest within six months of acceptance by that Member State of the request to take charge of or to take back that person or of the final decision on an appeal or review where there is a suspensive effect.

44 Article 29(2) of that regulation states that, where the transfer does not take place within the six-month time limit, the Member State responsible is to be relieved of its obligations to take charge of or to take back the person concerned and responsibility is then to be transferred to the requesting Member State.

45 Thus, Article 29 of the Dublin III Regulation does not lay down specific rules relating to a situation in which, while a request made by a requesting Member State to take back a third-country national has already been accepted by another Member State, that person lodges an application for international protection in a third Member State.

46 In order to assess whether, in such a situation, the lodging of an application for international protection in a third Member State, or the response to that application, must be taken into account for the purposes of applying those provisions, it is necessary to determine the rules governing the procedures to be implemented under the Dublin III Regulation in the event of the successive lodging of applications for international protection in a number of Member States.

47 The scope of the take back procedure is defined in Articles 23 and 24 of the Dublin III Regulation. It is apparent from Article 23(1) and Article 24(1) of that regulation that that procedure is applicable to the persons referred to in Article 20(5) or Article 18(1)(b) to (d) of that regulation (judgment of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 46).

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

responsible for examining the application. That provision is also applicable in a situation in which an applicant has left the Member State in which he or she lodged the first application, before the process of determining the Member State responsible for examining the application has been completed, without informing the competent authority of that first Member State of his or her wish to abandon the application (see, to that effect, judgment of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraphs 46 and 50).

49 As regards Article 18(1)(b) to (d) of the Dublin III Regulation, it refers to a person (i) who has lodged an application for international protection, which is under examination, who has withdrawn that application while it is under examination or whose application has been rejected and (ii) who has either made an application in another Member State or is staying on the territory of another Member State without a residence document (judgment of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 51 and the case-law cited).

50 Article 20(5) and Article 18(1)(b) to (d) of that regulation are thus complementary, in so far as the first of those provisions applies to a situation in which the Member State responsible for examining an application for international protection has not yet been determined, while the second of those provisions concerns cases in which responsibility for examining the application has already been established (see, to that effect, judgment of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraphs 52, 66 and 67).

51 In those circumstances, since Article 23(1) of that regulation refers, in general terms, to the Member State with which a new application for international protection has been lodged, which considers that another Member State is responsible in accordance with Article 20(5) or Article 18(1)(b) to (d) of that regulation, it must be held that the take back procedure is applicable not only to the second Member State with which a third-country national has lodged such an application, but also to a third Member State with which that third-country national subsequently lodged a new application for international protection.

52 As regards the detailed rules relating to the take back procedures initiated following the successive lodging of applications for international protection in a number of Member States, it should be noted that the EU legislature did not make any distinction, in the provisions relating to the initiation and conduct of the take back procedure, namely Articles 23 to 25 of the Dublin III Regulation, as to whether that procedure is initiated by the second Member State with which an application for international protection has been lodged by a third-country national or by a third Member State with which such an application has subsequently been lodged.

53 In the absence of any specific provision, there is no reason to draw a distinction between those two situations which is not provided for in that regulation (see, by analogy, judgment of 10 September 2015, *FCD and FMB*, C-106/14, EU:C:2015:576, paragraph 50).

54 Consequently, in those situations, the Member States involved in the take back procedures are required to comply with the mandatory time limits which the EU legislature has provided as a framework for those procedures.

55 Those time limits make a decisive contribution to achieving the objective of rapidly processing applications for international protection set out in recital 5 of the Dublin III Regulation, by ensuring that those procedures will be implemented without undue delay, and testify to the particular importance which that legislature has attached to the rapid determination of the Member State responsible for the examination of an application for international protection and to the fact that, having regard to the aim of ensuring effective access to the procedures for granting

international protection and of not compromising the objective of rapid processing of applications for international protection, the EU legislature regards it as essential that such applications are, when necessary, examined by a Member State other than the one designated as being responsible pursuant to the criteria set out in Chapter III of that regulation (see, to that effect, judgment of 13 November 2018, *X and X*, C-47/17 and C-48/17, EU:C:2018:900, paragraphs 69 and 70).

56 It follows, in the first place, that the mandatory time limits laid down in Article 23(2) of the Dublin III Regulation must be complied with both by the second and by the third Member State with which an application for international protection was lodged by a third-country national, where those Member States make a take back request.

57 However, since some of the cases at issue in the main proceedings relate to situations in which a third-country national has lodged a number of applications for international protection in the same Member State, it should be noted that, where an applicant makes a new application for international protection in a Member State after that Member State has adopted a decision to transfer that applicant, the implementation of that decision remains, in principle, possible, without it being necessary for that Member State to lodge a new take back request, even if that applicant has, in the meantime, lodged an application for international protection in another Member State.

58 If a transfer decision were not to be recognised as having such an effect, that would enable any third-country national against whom a transfer decision has been adopted by a Member State to evade definitively the implementation of that decision before it has been able to take effect, by lodging an application for international protection in another Member State, then returning to the first Member State, at the risk of paralysing completely the mechanism for processing applications for international protection established by the Dublin III Regulation and jeopardising the attainment of the objective of rapidly processing those applications.

59 Accordingly, a Member State which has adopted a transfer decision that has not yet been implemented, and the implementation period of which has not expired, cannot have responsibility for examining the application for international protection transferred solely because, following the lodging of a new application for international protection in its territory, it did not make a new take back request within the time limits laid down in Article 23(2) of the Dublin III Regulation.

60 On the other hand, it is imperative that such a request be made in order to be able to proceed with the transfer of a third-country national who has been the subject of a transfer decision to the Member State concerned where that decision has already been implemented (see, by analogy, judgment of 25 January 2018, *Hasan*, C-360/16, EU:C:2018:35, paragraph 51).

61 In such a situation, if no take back request is made within the periods laid down in Article 23(2) of the Dublin III Regulation, the Member State with which a new application for international protection was lodged will become, in accordance with Article 23(3) of that regulation, the Member State responsible for examining that application, without the question of the possible expiry of the transfer time limit provided for in Article 29(1) of that regulation having any bearing.

62 In the second place, it follows from the considerations set out in paragraphs 52 to 54 above that the rules relating to transfer periods set out in Article 29(1) and (2) of the Dublin III Regulation are applicable in the context of the take back procedures conducted while the third-country national concerned has lodged successive applications for international protection in a number of Member States.

63 In that regard, the six-month time limit for transfers laid down in Article 29(1) of the Dublin III Regulation is intended, inter alia, to allow, having regard to the practical complexity and organisational difficulties involved in implementing the transfer of a third-country national, the necessary time for the two Member States concerned to consult each other with a view to carrying out that transfer and, more specifically, the requesting Member State to determine the details for implementing the transfer (see, to that effect, judgment of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraph 58 and the case-law cited).

64 Accordingly, and given that that provision does not lay down any specific rules for cases in which a number of take back requests have been successively accepted, the transfer time limit applicable to a requesting Member State must be calculated from the date on which the request made by that Member State was accepted by the requested Member State, even where a period for the transfer of a third-country national between another requesting Member State and that requested Member State has already started to run.

65 Furthermore, in such a situation, since the various take back procedures are conducted independently by each of the requesting Member States and the Dublin III Regulation does not provide for a coordination mechanism allowing derogation from the rules set out in Article 29 of that regulation, the transfer time limit resulting from the fact that an initial take back request has been accepted by the requested Member State cannot be interrupted or extended because a new take back request, made by another Member State, has been accepted by the requested Member State.

66 Admittedly, as the referring court states, from the date on which the person who is the subject of a transfer decision has left the territory of a Member State in order to remain outside that territory, that Member State is, in practical terms, no longer in a position to carry out the transfer, which means that the transfer time limit provided for in Article 29 of the Dublin III Regulation could then expire without that Member State having had at its disposal the entire period of time considered by the EU legislature to be appropriate for determining the details for implementing the transfer.

67 However, the EU legislature expressly took account of the risk that the person concerned may evade the authorities by absconding and provided, in Article 29(2) of that regulation, that, in such a situation, the requesting Member State could, exceptionally, extend the transfer time limit up to a maximum of 18 months (see, to that effect, judgment of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraph 67).

68 That solution, which is an expression of the balance struck by the EU legislature between the different objectives of the Dublin III Regulation and the competing interests involved, applies in all cases of absconding and therefore applies both when the person concerned absconds and remains on the territory of the requesting Member State and when he or she leaves that territory while absconding.

69 Furthermore, it is important to recall that the EU legislature did not consider that the fact that it was materially impossible to execute the transfer decision should be regarded as justification for the interruption or suspension of the transfer time limit set out in Article 29(1) of the Dublin III Regulation (see, to that effect, judgment of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraph 65 and the case-law cited).

70 The Court has therefore held that the transfer time limit provided for in that provision had to be applied in situations where the transfer of the person concerned was impossible (see, to that effect, judgments of 16 February 2017, *C. K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 89; of 31 March 2022, *Bundesamt für Fremdenwesen und Asyl and Others (Committal of an asylum seeker to a psychiatric hospital)*, C-231/21, EU:C:2022:237, paragraph 62; and of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraph 70).

71 In those circumstances, the fact that the person concerned, while absconding, lodged a new application for international protection in a Member State other than the requesting Member State or that a new take back request has been accepted following the lodging of such an application is not capable, in the absence of a rule laid down for that purpose by the Dublin III Regulation, of justifying the interruption or extension of one of the mandatory time limits laid down in Article 29 of that regulation. Furthermore, such a situation in no way implies that that person remains permanently outside the territory of the first requesting Member State and thus prevents that Member State from carrying out the transfer, as is illustrated by the facts at issue in the main proceedings in Cases C-323/21 and C-324/21.

72 It follows that, where the transfer time limit resulting from the acceptance of a take back request made by a requesting Member State has expired, responsibility for examining the application for international protection is transferred, in accordance with Article 29(2) of the Dublin III Regulation, to that requesting Member State, even if a new application for international protection has, in the meantime, been lodged in another Member State or if a new take back request has been accepted following the lodging of such an application.

73 In the third place, a transfer of responsibility for examining the application for international protection lodged by a third-country national, arising from the application of Articles 23 or 29 of the Dublin III Regulation, must be duly taken into account by all the Member States when implementing any take back procedures relating to that applicant.

74 It follows, first, that, in so far as Article 20(5) of the Dublin III Regulation applies, as is apparent from paragraph 50 above, only where the Member State responsible for examining an application for international protection has not yet been determined, a take back request cannot validly be sent, in accordance with Articles 18 and 23 of that regulation, to the Member State in which a third-country national has lodged his or her first application for international protection after responsibility for examining that application has been transferred to another Member State. In such a case, any take back request must be addressed to the latter Member State.

75 Since the provisions of the Dublin III Regulation which establish mandatory time limits contribute, together with the criteria set out in Chapter III of that regulation, to determining the Member State responsible within the meaning of that regulation (see, to that effect, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 53), the rule set out in paragraph 74 above applies, in particular, where the transfer of responsibility for examining an application for international protection stems from those provisions and, in particular, from Article 23 or 29 of that regulation.

76 In particular, in a situation where the transfer time limit, resulting from the fact that the take back request made by the first requesting Member State has been accepted by the requested Member State, has expired before a new take back request made by another Member State has been accepted, that Member State will have to address its request to the first requesting Member State,

since that Member State must, pursuant to Article 29(2) of the Dublin III Regulation, now be regarded as the Member State responsible.

77 Second, as regards the situation in which the transfer of responsibility for examining the application for international protection to a Member State other than the requested Member State took place after a take back request made by a third Member State has been accepted, it should be borne in mind, first, that the Dublin III Regulation is based on the essential principle, set out in Article 3(1), that an application for international protection must be examined by a single Member State only, which means that a single Member State may be considered to be, at a given moment, the Member State responsible for examining an application for international protection (see, to that effect, judgment of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 78).

78 Second, it follows from the Court's case-law that a third-country national cannot be transferred to a Member State other than the Member State responsible where the transfer of responsibility for examining the application for international protection arises from the expiry of a procedural time limit subsequent to the acceptance of the take back request and the adoption of a transfer decision (see, to that effect, judgments of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 43, and of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 47).

79 Consequently, the transfer of responsibility for examining the application for international protection lodged by a third-country national to a Member State, pursuant to Article 23 or 29 of the Dublin III Regulation, precludes the execution of a decision involving the transfer of the person concerned to another Member State.

80 That said, in such a situation, it is important to point out that it remains open to the Member State whose transfer decision thus becomes unenforceable to send a take back request to the Member State to which that responsibility has been transferred.

81 It is true that Article 23(3) of the Dublin III Regulation provides for the transfer of responsibility for examining an application for international protection to the Member State with which a new application for international protection has been lodged, where that Member State fails to make a take back request within the time limits laid down in Article 23(2) of that regulation.

82 However, a Member State which has, within those time limits, sent a take back request to the Member State which was, at that time, responsible for examining an application for international protection cannot be regarded as having failed to make such a request in good time.

83 It follows, first, that the rule in Article 23(3) of the Dublin III Regulation does not apply to such a Member State.

84 The application of that rule in such a situation would not, moreover, be consistent with the objective of the time limits laid down in Article 23(2) of that regulation, that is to say, to ensure that the requesting Member State initiates the take back procedure within a reasonable period from the date on which it has information enabling it to submit a take back request to another Member State (see, to that effect, judgment of 25 January 2018, *Hasan*, C-360/16, EU:C:2018:35, paragraph 63).

85 It follows, second, that the transfer of responsibility referred to in paragraph 79 above set in motion, for the Member State on whose territory the applicant is present, a new time limit, pursuant

to Article 23(2) of the Dublin III Regulation, for submitting a take back request to the Member State to which that responsibility has been transferred.

86 In the light of all those considerations, the answer to the first question in Cases C-323/21 and C-325/21, and to the single question in Case C-324/21, is that Articles 23 and 29 of the Dublin III Regulation must be interpreted as meaning that, where a time limit for the transfer of a third-country national between a requested Member State and a first requesting Member State has started to run, responsibility for examining the application for international protection lodged by that person is transferred to that requesting Member State by reason of the expiry of that time limit, even though that person, in the meantime, lodged a new application for international protection in a third Member State, which led to the acceptance by the requested Member State of a take back request made by that third Member State, provided that that responsibility has not been transferred to that third Member State by reason of the expiry of one of the time limits provided for in Article 23.

87 Following such a transfer of responsibility, the Member State in which that person is present cannot transfer him or her to a Member State other than the newly responsible Member State, but it may, however, within the time limits laid down in Article 23(2) of that regulation, submit a take back request to the latter Member State.

#### *The second question in Cases C-323/21 and C-325/21*

88 By its second question in Cases C-323/21 and C-325/21, the referring court asks, in essence, whether Article 27(1) of the Dublin III Regulation, read in the light of recital 19 of that regulation, must be interpreted as meaning that a third-country national who has lodged an application for international protection successively in three Member States may, in an action brought pursuant to Article 27(1) of that regulation against a decision to transfer him or her to the first of those Member States, adopted by the third of those Member States, rely on the fact that, subsequent to the adoption of that transfer decision, responsibility for examining his or her application was transferred, by reason of the expiry of the time limit for transfer provided for in Article 29(1) and (2) of that regulation, to the second of those Member States.

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

90 The scope of that remedy is explained in recital 19 of the Dublin III Regulation, which states that, in order to ensure that international law is respected, the effective remedy introduced by that regulation in respect of transfer decisions must 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 applicant is to be transferred (judgments of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 39, and of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 33).

91 In the light, in particular, of the general thrust of the developments that have taken place, as a result of the adoption of the Dublin III Regulation, in the system for determining the Member State responsible for examining an application for international protection made in one of the Member States, and of the objectives of that regulation, Article 27(1) of the regulation must be interpreted as meaning that the remedy which it provides against a transfer decision must be capable of relating both to observance of the rules attributing responsibility for examining an application for international protection and to the procedural safeguards laid down by that regulation (judgments of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 40, and of 15 April

2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 34).

92 Furthermore, the Court has held that, in the light (i) of the objective, referred to in recital 19 of the Dublin III Regulation, of guaranteeing, in accordance with Article 47 of the Charter of Fundamental Rights, effective protection of the persons concerned, and (ii) of the objective of determining rapidly the Member State responsible for processing an application for international protection set out in recital 5 of that regulation, the applicant must have available an effective and rapid remedy which enables him or her to rely on circumstances subsequent to the adoption of the transfer decision, where taking those circumstances into account is decisive for the correct application of the regulation (judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 35 and the case-law cited).

93 Such an effective remedy must, in particular, enable the applicant for international protection to rely, in the Member State on whose territory he or she is present, on the expiry of the transfer time limit, laid down in Article 29(1) and (2) of the Dublin III Regulation, vis-à-vis another requesting Member State, since it is apparent from paragraph 79 above that taking account of the expiry of that time limit is decisive for the correct application of that regulation.

94 That being so, it should be recalled that the Member States are not necessarily required, under Article 27 of that regulation, to organise their remedy system in such a way that the requirement to take into account decisive circumstances subsequent to the adoption of the transfer decision is guaranteed in the examination of the action enabling the legality of the transfer decision to be called into question, provided that sufficient judicial protection can be guaranteed in other forms, within the national judicial system considered as a whole (see, to that effect, judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraphs 37 and 46).

95 Such other form of sufficient judicial protection must, in practice, ensure that the person concerned has the opportunity to prevent the competent authorities of the Member State on whose territory that person is present from transferring that person to another Member State, where the expiry of the time limit for transfer to a first requesting Member State means that that first requesting Member State has become the Member State responsible for examining the application for international protection. That remedy must also ensure that the competent authorities of the Member State on whose territory that person is present are obliged to take the necessary steps to give effect to the transfer of responsibility for examining the application for international protection without delay (see, to that effect, judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 47).

96 Consequently, the answer to the second question in Cases C-323/21 and C-325/21 is that Article 27(1) of the Dublin III Regulation, read in the light of recital 19 of that regulation, and Article 47 of the Charter of Fundamental Rights must be interpreted as meaning that a third-country national who has lodged an application for international protection successively in three Member States must be able, in the third of those Member States, to have available an effective and rapid remedy which enables him or her to rely on the fact that responsibility for examining his or her application was transferred, by reason of the expiry of the time limit for transfer provided for in Article 29(1) and (2) of that regulation, to the second of those Member States.

## Costs



97 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 (First Chamber) hereby rules:

1. **Cases C-323/21, C-324/21 and C-325/21 are joined for the purposes of the judgment.**
2. **Articles 23 and 29 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 meaning that, where a time limit for the transfer of a third-country national between a requested Member State and a first requesting Member State has started to run, responsibility for examining the application for international protection lodged by that person is transferred to that requesting Member State by reason of the expiry of that time limit, even though that person, in the meantime, lodged a new application for international protection in a third Member State, which led to the acceptance by the requested Member State of a take back request made by that third Member State, provided that that responsibility has not been transferred to that third Member State by reason of the expiry of one of the time limits provided for in Article 23.**

**Following such a transfer of responsibility, the Member State in which that person is present cannot transfer him or her to a Member State other than the newly responsible Member State, but it may, however, within the time limits laid down in Article 23(2) of that regulation, submit a take back request to the latter Member State.**

3. **Article 27(1) of Regulation No 604/2013, read in the light of recital 19 of that regulation, and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a third-country national who has lodged an application for international protection successively in three Member States must be able, in the third of those Member States, to have available an effective and rapid remedy which enables him or her to rely on the fact that responsibility for examining his or her application was transferred, by reason of the expiry of the time limit for transfer provided for in Article 29(1) and (2) of that regulation, to the second of those Member States.**

[Signatures]

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\* Language of the case: Dutch.

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